

## MEMO

<b><u>To:</u></b>	<b>Hingham Planning Board</b>
<b><u>From:</u></b>	<b>Jennifer M. GaySmith</b>
<b><u>Re:</u></b>	<b>ADU Zoning By-Law: Responses to Latest Planning Board Questions</b>
<b><u>Date:</u></b>	<b>January 30, 2023</b>

Below are my answers to some of your most recent questions. While I served as the Chair of the ADU Study Committee, the charge of the committee ended with the submission of our report to you in September 2022. The ADU Study Committee has not met since September of 2022 and therefore the responses below do not reflect the answers of the ADU Study Committee, but rather my responses as the Chair.

### **ADU Zoning Article Board Questions/Comments:**

#### **Purposes:**

- How does the introduction of rental ADUs in accessory structures impact the conversation of protecting community and sense of place to fostering commercial transient residential uses and development density in residential neighborhoods. (Gary)

The Study Committee discussed the importance of our Hingham community throughout the process. Renting a single family dwelling or an ADU is a residential use, not a commercial use according to the Hingham Zoning By-Law.

#### **Family/Occupancy:**

- If a home is sold with an ADU, what happens to the ADU if all bedrooms in the main dwelling are occupied? Do the new owners have any recourse to be able to rent the ADU? (Rita)

The Study Committee report did not propose any changes to the provision of the existing ADU Zoning By-Law, which as you know requires the ADU Special Permit to incorporate Section V-K (5)(c) which states:

Upon the sale or other conveyance or transfer of a single-family dwelling which has been issued a permit for an accessory dwelling unit, if the new owner wishes to maintain the Special Permit for the accessory dwelling unit use, such new owner must, within thirty (30) days of such transfer, submit a notarized letter to the Building Commissioner certifying that the new owner will occupy one of the dwelling units as the new owner's primary residence and comply with the other conditions of the accessory dwelling unit use.

- Like some other towns could we add to the bylaw that no unattached ADU can be used as a Bed & Breakfast or an Airbnb? (Rita)

Town Counsel should weigh in on whether or not this is necessary in our Zoning By-Law given the other restrictions in place. Concord includes the following in Section 4.2.2.2 (m) of their Zoning By-Law which could be instructive:

(m) The single-family dwelling or the additional dwelling unit shall not be used for a bed and breakfast under Section 5.3.15.

The ADU Study Committee favored not allowing an ADU to be used as a bed and breakfast or an Airbnb whether or not the ADU is in the primary dwelling **or** a detached structure.

- What kind of data and/or roll call vote was taken to change familial to rental? (Rita)

The ADU Study Committee voted to approve our final conclusions in the ADU Study Committee report to the Planning Board. The final version was voted on favorably by the Committee with only one “no” vote.

- Why 30 day minimum? What purpose does it serve the town, homeowner and especially the abutters'? (Rita)

The ADU Study Committee Report recommended a 60 day occupancy period. The ADU Study Committee spent a fair amount of time discussing the appropriate length of occupancy for an ADU. We discussed a six month occupancy period and were ultimately persuaded by the argument that six months was longer than a school semester and could therefore preclude a rental by a student. We recommended 60 days as we thought such a term would eliminate ‘vacation’ rentals in our seaside community. We were very focused on the impact of ADUs on neighbors and we didn’t want to create situations with high turnover of renters availing themselves of short term ‘vacation’ type rentals.

- In the initial discussions by the Study Committee, the scope expanded from familial ADUs in existing accessory structures to non-familial rental ADUs in existing or new accessory structures. Was there an examination of and data provided on the pros, cons and unintended consequences of this expansion of scope? (Gary)

The ADU Study Committee scope was outlined in Article 27 of the 2021 Hingham Town Meeting Warrant. As stated in the ADU Study Committee report, “The Committee discussed the existing family occupancy limitation under Section V-K at length.” The report includes some of the data that we collected and reviewed. There is more on the ADU Study Committee website and see other answers in this document for more information.

- The 2021 Hingham Master Plan includes specific Policy Recommendation 4.4: “Explore the possibility of allowing detached accessory dwelling units in some or all of the areas where accessory dwelling units are now allowed for family members, but not for rental”. What is the basis of the report’s recommendation otherwise? (Gary)

Please see the following excerpts from the ADU Study Committee Report. And please also see the full excerpt from the Hingham Housing Plan included at the end of this document.

### Purposes

The 2021 Hingham Housing Plan outlined other benefits of more expansive ADU regulations upon which the Board may model updated purposes if the familial restriction is eliminated. These include the following objectives:

- Create moderately-priced housing for those who might otherwise find it difficult to find housing.
- Offer appropriately sized units for growing numbers of smaller households, young adults and senior citizens in particular.
- Provide a fairly inexpensive means of increasing the supply of year-round rental units at lower cost than new construction and without significant impact on the surrounding neighborhood.
- Create housing units that do not require additional Town services, such as new streets or utilities, and involve little or no loss of open space.
- Provide companionship, security and services for the homeowner or tenant.
- Generate increased tax revenue in a locality because accessory units typically add value to existing homes.
- Offer a way of preserving historic properties given the rental stream available to help maintain the property.

### Occupancy Restriction

The Committee discussed the existing family occupancy limitation under Section V-K at length. As noted under the summary of the Other ADU Regulations topic, most benchmark communities do not restrict occupancy to family members. Two of the three that do (Needham and Rockland) have more permissive definitions of family than that contained in Section V-K of the Hingham Zoning By-Law. Members heard conflicting input on this restriction. The Hingham Affordable Housing Trust and the Hingham Unity Council advocated for more expansive ADU zoning, including elimination of the family restriction. The Commission on Disabilities on the other hand raised concerns about affordability, particularly for disabled residents, if the restriction is lifted. The ADU Study Committee discussed the divergence of opinions on this issue at length. Ultimately, members concluded that the existing and proposed restrictions on ADUs provide strong protections against potential negative impacts on neighbors - the most important being the owner occupancy requirement. The ADU Study Committee was unable to identify a legitimate zoning purpose for restricting occupancy to family members. However, members also expressed practical concern that it may not be politically realistic to put forward a zoning article that both allows detached ADUs and eliminates the familial restriction at the same time. The Committee acknowledged that Hingham tends to be more conservative in its approach to new regulations, adopting changes on a more incremental basis. The Committee

hopes that addressing both issues at the same time does not result in negative action on both. Ultimately, the ADU Study Committee opted to recommend that the Board consider eliminating the familial restriction from the ADU By-Law, with appropriate safeguards to ensure that ADUs are not used as short-term rentals or guesthouse uses, neither of which are presently allowed in Hingham. While practically many homeowners interested in creating an ADU will initially do so for family members, removing the restriction allows the ADU to be reoccupied after family circumstances change. It also provides homeowners with more flexibility to share in housing costs and responsibilities and promotes aging in place. The proposed additional enforcement mechanism consists of an occupancy term of 60 days for the unit not occupied by the owner.

- The following commentary from Airbnb’s head of policy Chris Lehane is topical:  
“As the global travel market has plummeted, Airbnb is pivoting its business to focus on long term rental stays. Monthly rentals including private rooms to entire houses will be featured in February. As a result of the pandemic, Airbnb sees a housing space demand that is someone’s permanent home, but not necessarily year to year and not a short term rental offering.” (said Airbnb’s head of policy Chris Lehane). Airbnb has directly impacted the housing market all along. Many Airbnb housing units may have been in the regular rental pool already had Airbnb not made short term rentals so appealing to landlords. For the most part, short term rentals have been poaching what would otherwise be permanent rental housing. For years, housing advocates and local governments have argued that Airbnb drove up housing prices by shifting homes from the local rental market and moving it into the short term market designed for tourists and not local residents. Some including Airbnb have asserted that the majority of short term rental owners use Airbnb to help create economics to meet their monthly financial needs. The demand for monthly rentals has grown 30% in 2022. Longer term rentals offered by Airbnb (and Vrbo) do not come with tenancy at will or lease agreements. (Gary)

No response. (I do not believe this is a question directed at the ADU Study Committee.)

- Given that we have learned the by-law cannot require a rental term longer than 30 days – which is half the length that the Committee recommended and far shorter than some of us on the Planning Board would be comfortable with – what is the Committee’s proposed approach to address the concerns about such a short minimum term and the potential impacts it could have? Or is the Committee comfortable now with a 30 day minimum? (Gordon)

The ADU Study Committee report was issued prior to Town Counsel’s November 2022 memo which addressed the occupancy term. The ADU Study Committee completed its charge upon submission of the report to the Planning Board and is no longer holding meetings. Therefore, unfortunately I cannot give you an update on behalf of the committee. I can only reiterate that 30 days is shorter than the ADU Study Committee felt was necessary to protect neighbors and some of our reasoning is described in my response to Rita’s question above.

Dimensional/Zoning Considerations:

- The introduction of an active occupancy in a passive use accessory building increases the intensity of use. Our peer towns have required that the minimum lot size of the zoning district be complied with or exceeded and that setbacks and regulatory requirements increase to protect the privacy of the residents and abutters. Why does this proposed ADU Warrant Article reduce the lot size and setback requirements? (Gary)

It doesn't. In fact, it is more restrictive, requiring a minimum 10,000 sq ft lot for an ADU in a detached structure (the current Zoning By-Law allows an ADU in a 5,000 sq ft lot).

We did recommend a provision which gives the ZBA some discretion to make exceptions in instances where there is a pre-existing detached structure that is within a setback if they determine there is no impact on a neighbor that cannot be mitigated. We were thinking of a large lot with an outbuilding that is not close to a neighbor. See excerpt below (emphasis added):

“The detached accessory dwelling unit shall comply with all building dimensions, including the front, side or rear yard setback and height limitations. Notwithstanding the foregoing, the Permit Granting Authority may waive the preceding requirements for an accessory dwelling unit within a lawfully existing nonconforming detached accessory structure to no less than 10' from a side or rear property line **upon a finding that there will no potential negative visual or auditory impacts associated with the accessory dwelling unit that cannot be mitigated.**”

- Changing uses in accessory buildings will add buildings to the residential lot. The Report notes that the ADU should be consistent with the residential character of the lot and the neighborhood. Balancing open space and building coverage can be addressed in a lot coverage by-law. A lot coverage by-law with floor area ratio criteria needs to be included in any ADU bylaw allowing additional buildings on the lot. In the Planning Board Hearings in November, it was clarified that adding a lot coverage floor area ratio to this by law would not be an expansion of scope. The September ADU Report states “the Committee recommends that the Planning Board consider adoption of more universal zoning to discourage overbuilding in the future.” Please explain A) given this recommendation, why we should advance the detached ADU first, and B) how a change after the fact would be able to capture ADUs produced prior to its adoption. It seems the sequence should be reversed. (Gary)

No response. (I do not believe this is a question directed at the ADU Study Committee.)

- Many peer towns require a special permit with site plan review for an ADU in an accessory structure to be issued by the planning board. Has this been evaluated in this report? (Gary)

The ADU Study Committee didn't identify any reason to change the current framework for approving ADUs in Hingham. Please see the following excerpt from the ADU Study Committee Report:

Permitting Process

The By-Law presently allows attached ADUs upon issuance of a special permit by the Zoning Board of Appeals. While some communities allow ADUs, attached or detached, by-right and there is pending legislation that could require by-right permitting for ADUs serving certain populations, the Committee recommends retaining the special permit requirement for attached ADUs and extending it to detached. The mechanism ensures that abutters are informed of an application and provides an opportunity for interested parties to participate in the public hearing process.

- Hingham should follow the example of Concord Zoning By-Law in which short term rentals are limited to bed and breakfast and Airbnb housing units. Concord's Zoning By-Law excludes ADUs from short term rentals. (Gary)

The Concord Zoning By-Law excludes ADUs from being used as a bed and breakfast in Section 4.2.2.2(m). See answer to question from Rita above.

#### Financial/Affordability Considerations:

- Norwell and other towns have covenants that have financial penalties should a landlord/homeowner violate the ADU bylaw of their town. What will ours be? (Rita)

The ADU Study Committee recommended including a covenant like Norwell's in the Zoning By-Law. Town Counsel will need to work with the Planning Board to determine if this is the best way for Hingham to proceed.

- How does this proposed ADU Warrant Article address the need for affordable and accessible housing for the missing middle? (Gary)

Creation of ADUs are precisely the missing middle type of housing. Allowing ADUs in detached structures in Hingham has the potential to create more missing middle housing.

- How does this proposed ADU Warrant Article address the need for affordable and accessible housing for multigenerational families? Families with handicapped or ill children and parents? There are no suggestions for Town subsidies, tax and assessment reductions or means to create affordable ADUs such as in Lincoln and Salem, MA. (Gary)

The existing ADU Zoning By-Law creates an opportunity for our neighbors to create affordable and accessible housing for multigenerational families, families with handicapped or ill children or parents. The new proposal allowing ADUs in detached structures only increases opportunities for our neighbors to address these challenging situations.

- Hingham is undergoing a three year reassessment of residential and commercial property. Will these reassessments increase on a property due to the potential added value of the home and property? How will this impact middle income residents and senior citizens on a fixed income?

(Gary) The addition of detached ADUs for rental – and potentially even the eligibility of a property to have one – seem likely to increase the property’s assessed value and future sales price. The 2021 Housing Plan referenced in the September report references one of the objectives being to “generate increased tax revenue in a locality because accessory units typically add value to existing homes.” Given this likelihood, can the Study Committee explain how in the long term zoning change would not further exacerbate the cost of housing for the primary residence and for the housing market in town broadly? (Gordon)

Assessments are based on capital improvements, so it is likely that ADUs of all kinds (those allowed currently in the principal dwelling, those proposed in detached structures, occupied by family or rented to non-family) result in an increased assessment. An increased assessment would create both increased tax revenue for the town and a higher tax burden for the homeowner. The shared burden between family members is expected to offset this for some of our neighbors, and the opportunity to rent an ADU would help for some neighbors as well. The Town Assessor would perhaps be able to provide more information on what an ‘average’ tax increase would be for a newly built/created ADU vs existing space converted to an ADU which would allow us to quantify this (for ADUs in primary dwelling and in detached structures.)

- There is mixed opinion whether the Airbnb longer rental push will create more affordable housing. Some units will return to the longer term rental inventory. If new longer term rental units enter the housing market in a meaningful way, it could speed up already decreasing rent prices due to the long term pandemic economic forecast and due to those who were displaced adjusting to life in a new home’(Gary)

No response. (I do not believe this is a question directed at the ADU Study Committee.)

Miscellaneous:

- Please provide the data behind the September 22, 2022 ADU Study Committee Report recommendations and comments on the Report included in this memo. There is a reference to June 1922 Data in the report. (Gary)

Please see the ADU Study Committee website for data and the ADU Study Committee Report.

## **Excerpt from 2021 Hingham Housing Plan**

### **ZONING STRATEGIES**

As with most communities, Hingham's Zoning Bylaw includes relatively large lot zoning in most areas of town and other exclusionary provisions that help protect the environment but nevertheless constrain development. This creates the likely need for regulatory relief for many residential developments that include affordable units, possibly through the "friendly" comprehensive permit process if not through normal regulatory channels.

The second housing-related goal included in the Housing Section of the Hingham Master Plan Update is to "encourage and maintain a mix of housing types in various locations throughout the town by supporting development that provides for households at all income levels and encourages a diversity of age and families and housing types of a scale and character consistent with Hingham's character". To do this will require greater flexibility in Hingham's Zoning Bylaw.

Allowing a wider range of housing types will result in public benefits associated with broader private development options and more opportunities for affordable units. Many of these more diverse housing types are described in strategy #1 under Housing Development strategies below. To build such housing in Hingham will require zoning changes including adding them to the use regulations in more zoning districts, to establishing additional overlay districts, and to changing some dimensional and parking requirements. Both by-right and special permit provisions can be identified according to housing type and zoning district.

The Town should consider the following zoning-related strategies to promote the production of additional affordable units as well as a greater diversity of housing types to address a diversity of housing needs and direct new development to appropriate locations and target populations.

#### **1. Better promote Accessory Dwelling Units (ADUs)**

##### **Responsible Party: Planning Board**

##### **Priority: Short Term**

Accessory dwelling units (ADUs) are allowed by special permit in all of the Residence and Business Districts and defined in Section V-K of the By-Law as:

- a) A second self-contained dwelling unit within a single-family dwelling, which second dwelling unit is subordinate in size to the principal dwelling and otherwise complies with the provisions of this Section V-K.
- b) For the purposes of this Section V-K, a "family member" shall be a person related to the owner by blood, adoption or marriage, and may also include domestic help and caregivers.
- c) A "principal dwelling" for the purposes of this Section V-K is a single-family dwelling exclusive of the area that constitutes the accessory dwelling unit.
- d) A single-family dwelling with an accessory dwelling unit shall not be deemed to be a two-family dwelling.



The ADU regulations were adopted at the 2018 Annual Town Meeting. At the time of this report, the Board of Appeals had received 10 applications to construct an ADU. In each instance, the Board or its Zoning Administrator issued the requested special permit.

Because of changes to the state's Local Initiative Program (LIP) in 2008, all affordable accessory units must be affirmatively marketed based on a state approved Affirmative Fair Housing Marketing and Resident Selection Plan. This would involve the Town establishing and maintaining a waiting list of prequalified households applying to rent any affordable accessory units, referred to as a Ready Renters List, and precludes units that are currently occupied or where owners select their own tenants including family members. Consequently, most communities that are promoting accessory apartments are not pursuing the inclusion of these units in the Subsidized Housing Inventory. Moreover, since Hingham has surpassed the 10% state affordability goal, the enforcement of affordability requirements becomes less of a concern. It should be noted that the Town of Lincoln, which is also over the 10% state goal, has introduced a special program to support deed-restricted Hingham Housing Plan 87 affordable ADUs with incentives through a property tax exemption and 10-year, zero interest loans of up to \$25,000 to help create such units.

The recent adoption of an ADU bylaw is a good start and certainly a step in the right direction. However, restricting occupancy to family members largely sidesteps one of the primary purposes and benefits of such units – to provide homeowners with additional income that is particularly important for elderly homeowners, single parents, and others who are spending too much of their income on housing and for whom such income may be critical to remaining in their homes. Also, without the flow of income from the rent of an accessory apartment, some young families or moderate-income households might not be able to afford homeownership.

There are a number of reasons for promoting accessory apartments in the community besides keeping extended family together and offering potential support from caregivers including:

- Create moderately-priced housing for those who might otherwise find it difficult to find housing.
- Offer appropriately sized units for growing numbers of smaller households, young adults and senior citizens in particular.
- Provide a fairly inexpensive means of increasing the supply of year-round rental units at lower cost than new construction and without significant impact on the surrounding neighborhood.
- Create housing units that do not require additional Town services, such as new streets or utilities, and involve little or no loss of open space.
- Provide companionship, security and services for the homeowner or tenant.
- Generate increased tax revenue in a locality because accessory units typically add value to existing homes.
- Offer a way of preserving historic properties given the rental stream available to help maintain the property.

While the Town might have some apprehensions concerning the impact of ADUs on existing neighborhoods, problems have not been borne out in other communities. For example, the Town of Needham conducted a survey of nine communities to obtain information on accessory dwelling unit zoning in what it considered to be relatively comparable communities.<sup>23</sup> This report provided compelling evidence that ADUs could contribute to the overall goal of increasing housing options for older adults, young adults, people with disabilities, and people with moderate incomes without negatively impacting the quality of life. Using the Massachusetts Model Bylaw and the experiences of these nine communities as guides, the report concluded

that Needham could create a bylaw that ensured units could be integrated into existing single-family neighborhoods with little or no negative impact on the character of the neighborhood or on Town services, provide new options for current Needham homeowners, and minimize the regulatory burden on Town officials. The report<sup>23</sup> These communities included Acton, Bedford, Carlisle, Lexington, Milton, Newton, Scituate, Sudbury, and Westwood. Information from Section 3 of this Plan indicates that 215 of the 300 senior homeowners 62 years of age or older with incomes at or below 30% AMI were spending more than half of their income on housing costs. Such owners are struggling to remain in the community, many with likely more living space than they need. Some of these owners may find income from an ADU of great benefit but do not have a family member that would be interested and available to occupy an ADU. Hingham Housing Plan 88 emphasized the importance of affordability, allowing homeowners to rent their units to those beyond family and caregivers.

In order to promote accessory units, the Planning Board with support from the Affordable Housing Trust should further explore the Massachusetts Model bylaw as well as the bylaws in other communities. It should be noted that Lexington, Newton, and Scituate have relatively recently amended their zoning to better promote accessory units, eliminating what they considered ineffective restrictions. Both Lexington and Newton have a tiered permitting system that includes by-right approval when the unit meets standard requirements and is created within the existing footprint of the principal dwelling while extending a special permit process for those applications that fall out of these basic provisions including units in detached structures. These bylaws, especially Lexington's, would be a good place to start in the exploration of changes to the ADU bylaw.