

MEMORANDUM

To; Kevin Ellis, Acting Chair, Hingham Planning Board-ADU Public Hearings

From: Gary Tondorf-Dick, Member , Hingham Planning Board

CC: Emily Wentworth, Michael Silveira

Date: February 12, 2023

RE: Proposed Edits to ADU Warrant Article for review By Planning Board

Zoning Article

Accessory Dwelling Units

That the Town amend the Zoning By-law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: To amend Section V (Special Regulations) by deleting Section V-K, inclusive, in its entirety and replacing that Section with the following new Section V-K, inclusive:

V-K Accessory Dwelling Units

1. Purpose

Consistent with the Master Plan, adopted August 23, 2021, the purpose of permitting dwelling units accessory to single-family dwellings is to: **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".**

- a. **Encourage multigenerational family, community diversity of population and accessibility with attention to young adults and senior citizens.**

Delete the following: Provide a variety of housing to encourage population diversity and aging in the community.

- b. Protect the stability, property values, and character of one-family residential neighborhoods and help preserve the ownership of one-family dwellings.**
- c. Assist the Town meet its housing needs without detracting from its historic character and existing patterns of zoning and neighborhoods.**
- d. Develop housing units on single family residential properties that are appropriate for households at a variety of stages in life.**
- e. Provide accessory dwelling units without significantly adding to the number of buildings in the Town or substantially altering the appearance of the residential property and for the purpose of enabling owners of single-family dwellings to share space and the burdens of **household** homeownership while also protecting the stability, property values and residential character of the surrounding neighborhood.
- f. Provide housing units for households with diverse housing needs including, without limitation, family members with mental and physical disabilities.
- g. Enable the Town to monitor accessory dwelling unit construction for code compliance.

2. Definitions

- a. An "accessory dwelling unit" is a second self-contained dwelling unit located either within a single-family dwelling or a detached structure accessory thereto, which second dwelling unit is subordinate in size to the principal dwelling and otherwise complies with the provisions of this Section V-K.
- 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.

3. Eligibility Requirements **and Application Procedure**

The Board of Appeals may only issue a Special Permit A1 for an accessory dwelling unit **with Administrative Site Plan Review by the Planning Board** that meets the following minimum eligibility requirements:

- a. **The application for an accessory dwelling shall be prepared and stamped by a registered professional architect or engineer.**
- b. **The application for an Accessory Dwelling Unit special permit shall include a site plan and floor plan. When the creation of an accessory dwelling unit involves exterior alteration of the house, elevation plans shall show the sides of the building affected by the creation of an accessory dwelling unit, before and after the construction of the accessory dwelling unit. These plans shall include, at a minimum, footprint of existing house, location and number of off-street parking spaces, square footage of existing house, square footage of proposed accessory dwelling, and location/means of ingress and egress from the accessory dwelling unit.**
- c. **An Accessory Dwelling Special permit Application Shall be subject to administrative site plan review by the Planning Board prior to the issuance of a building permit, to confirm that the design and location shall maintain the single family residential appearance to the maximum extent possible.**
- d. **An application for approval of a special permit for an accessory dwelling shall include a notarized letter of application from the owner(s) with a covenant stating that the applicant is the primary owner and will occupy one of the dwelling units on the premises as his/her/their primary residence.**
- e. **Ownership duration prerequisite-5 year prior to submitting ADU Application.**
- f. **Yearly renewable ADU occupancy permit and certification.**
- g. **ADU shall be on first floor of accessory building.**
- h. **ADU cannot be sold separately as the ADU is Accessory to the primary residence on the single lot.**

- i. As of the date that the application for a special permit is filed with the Board of Appeals, the total number of accessory dwelling units in the Town shall not exceed two and one-half percent (2.5%) of the total single-family dwelling units in the Town (the "ADU Cap"). The ADU Cap shall be determined by a fraction represented as follows: the numerator shall be the total number of accessory dwelling units allowed by special permit pursuant to this Section V-K plus the number of accessory dwelling unit permit applications pending approval before the Board of Appeals and the denominator shall be the total number of single-family dwelling units existing in the Town as classified in the Hingham assessors' records.
- j. The applicant shall, at the time application is made for the special permit, be the owner of the lot and single-family dwelling thereon where the accessory dwelling unit is proposed and must certify in such application that the owner currently occupies the single-family dwelling or will occupy the principal dwelling or accessory dwelling unit as his or her primary residence immediately upon issuance of the special permit **retain:** .
- k. The area of the lot on which the existing single-family dwelling **and the existing accessory structure** is located shall not be less than five thousand (5,000) square feet for an accessory dwelling unit within the principal structure or ten thousand (10,000) square feet for an accessory dwelling unit in **an existing** detached accessory structure. In the case of new construction, the area of the lot shall comply with the applicable minimum lot size for the single-family zoning district in which the single-family dwelling is proposed.
- l. In the case of pre-existing lawful nonconforming structures, the ADU shall not increase the square footage of the pre-existing structure and shall not alter the footprint of the pre-existing structure.**
- m. The application must be accompanied by written confirmation from either (i) the Board of Health that the requirements of the Massachusetts Title 5 septic system regulations and the Hingham Board of Health Supplemental Rules and Regulations for septic systems have been or can be met or (ii) the Sewer Department that there exists available capacity in the applicable sewer district, in either case, to support the total number of bedrooms proposed for the lot inclusive of the accessory dwelling unit.
- n. Only one accessory dwelling unit shall be permitted per lot so that the total number of dwelling units per lot shall not exceed two.
- o. In Residence District D and in Business Districts A and B accessory dwelling units are only permitted in connection with preexisting nonconforming single-family dwellings.

a. Dimensional and Design Requirements Applicable to all Accessory Dwelling Units

The Board of Appeals may only issue a Special Permit A1 for an accessory dwelling unit that meets the following dimensional and design requirements:

- a. The architectural character of a single-family dwelling use shall be maintained.
- b. All stairways accessing an accessory dwelling unit above the ground floor of a single-family dwelling or detached accessory structure shall be enclosed within the exterior walls of the building.
- c. The maximum area of an accessory dwelling unit shall be the lesser of 875 square feet or 35% of the gross floor area of the principal dwelling. For this calculation, the gross floor area shall be as defined in Section VI of this By-Law.
- d. An accessory dwelling unit shall not be created by any extension of a non-conforming building dimension, including the front, side or rear yard setback.
- e. Any new entrance for the accessory dwelling unit or principal dwelling shall be located to the side or rear of the single-family dwelling or detached accessory structure.
- f. Water and sewer utilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling; provided, however, that the Board of Appeals may waive this requirement for an accessory dwelling unit within a lawfully existing structure which already maintains separately metered utilities, if the request is accompanied by the written approval of the appropriate utility, upon a finding that a waiver advances the purposes of this bylaw.
- g. **At least one off street parking space per ADU bedroom in addition to the number of spaces required for the single family dwelling is required for the ADU. Each parking space and the driveway serving such space(s) shall be paved or have a gravel surface.**
- h. **Outside storage areas shall be screened by fencing or dense landscaping.**

- i. **All exterior lighting shall be dark sky compliant.**
- j. **The lot on which an ADU is located shall be of adequate size and configuration to permit the increased use without adverse visual impact on the neighboring properties.**
- k. **Where additional parking spaces are being created for the ADU, there shall be dense evergreen or deciduous plantings, walls, fence or a combination thereof in the area between the parking areas and the nearest side lot line. Screening shall be sufficient to minimize the visual impact on abutters and maintain the single family appearance of the neighborhood.**
- l. Additional or modified landscaping, fences or other buffers may be required to protect abutting properties from potential negative visual or auditory impacts of the accessory dwelling unit.
- m. The parking requirement for an accessory dwelling unit is one space per bedroom in addition to the minimum required parking spaces for a single-family dwelling.
- n. **The ADU shall contain no more than two bedrooms and no greater than a maximum habitable floor area of 875 square feet. Garages, unfinished attics, and basements, common entries, porches and decks shall not be included in the floor area calculations. Once an ADU has been added to a single family dwelling or a lot, the accessory dwelling unit shall not be enlarged beyond the square footage allowed by this section of the By Law.**
- o. **Delete:** An accessory dwelling unit may not have more than two (2) bedrooms.
- p. **ADU shall be on first floor of accessory building.**

b. Additional Dimensional and Design Requirements Applicable to Accessory Dwelling Units in Detached Accessory Structures

The Board of Appeals may only issue a Special Permit A1 **with Administrative Site Plan Review by the Planning Board** for a detached accessory dwelling unit that meets the following dimensional and design requirements:

a. The detached accessory dwelling unit shall comply with all building dimensions, including the front, side or rear yard setback and height limitations **of 24 feet in a detached structure**. 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.

b. The detached accessory dwelling unit shall be located a minimum of **20'** from the principal dwelling and to the rear of the principal single-family dwelling or to the side of the single-family dwelling at a minimum position

c. Conversion of existing garage, replacement new garage requirements-all buildings to comply with all zoning requirements and regulations and Lot Coverage Bylaw (FAR).

d. Lot Coverage By Law-FAR: The Maximum Floor Area Ratio: The total gross floor area of all buildings on a lot shall not exceed the maximum percentage square footage of lot area as follows:

Residence District A: $0.175 \times 20,000 \text{ SF} = 3,500 \text{ SF}$

Residence District B: $0.15 \times 30,000 \text{ SF} = 4,500 \text{ SF}$

Residence District C: $0.15 \times 40,000 \text{ SF} = 6,000 \text{ SF}$

e. Excluded from the gross floor area in residential districts are , open or screened porches, decks and accessory structures with no permanent foundation or less than 100 square feet in area. The Planning Board may grant relief from the maximum Floor Area Ratio in the residence Districts A, B, C and D provided that the Board finds that a literal application of this requirement would be unreasonable because there are no reasonable alternatives available and that the relief may be granted without substantial

detriment to the neighborhood and without derogating from the intent and purpose of this By Law.

f. The lot, the single family house and the ADU shall comply with existing zoning requirements, lot size of the residential district, setbacks, tree yard, building height and Maximum Lot Coverage-Floor Area Ratio. Provisions for existing non-conforming lots are included in the Lot Coverage, Maximum Floor Area Ratio By Law subsection below.

b. **20'** further back from the front plane of the single-family dwelling.

c. General Conditions

Any special permit issued pursuant to this Section V-K shall be subject to, and shall incorporate the following conditions:

a. The owner of the single-family dwelling shall occupy either the principal dwelling or the accessory dwelling unit as the owner's primary residence. Temporary absences of the owner for a period of not more than six months in the aggregate in any twelve month period and active military service of the owner for any length of time shall not be deemed a violation of this requirement **retain** .

b. **An application for approval of a special permit for an accessory dwelling shall include a notarized letter of application from the owner(s) with a covenant stating that the applicant is the primary owner and will occupy one of the dwelling units on the premises as his/her/their primary residence. A yearly renewable ADU occupancy permit and certification is required.**

c. **Ownership duration prerequisite-5 year prior to submitting ADU Application.**

d. The owner shall recertify annually, by submission of a notarized letter to the Building Commissioner, that the owner will continue to occupy either the primary dwelling or the accessory dwelling unit as the owner's primary

residence, except for a bona fide temporary absence as provided above in subsection 6.a.

- e. 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.
- f. **ADU cannot be sold separately as the ADU is Accessory to the primary residence on the single lot.**
- d. Neither the principal dwelling nor the accessory dwelling unit may be sold or otherwise conveyed or transferred separately from the other.
- g. The accessory dwelling unit or the principal dwelling, whichever is not owner-occupied, shall have a minimum occupancy or rental term of **12 Months** (30) days.
- h. **A determination by the Building Commissioner that the owner has failed to meet the occupancy requirements of this By Law shall render the ADU occupancy permit null and void, the improvements that render the ADU a separate dwelling shall be removed from the property within 90 days in accordance with the MSBC. Following such removal, there shall not be any further use or occupancy of the ADU separately from the principal dwelling quarters.**
- i. **An owner of a previously permitted ADU prior to this By Law enactment, conforming to this section, may apply for an occupancy permit to continue legal use as an ADU.**

or act on anything related thereto?

(Inserted at the request of the Planning Board)

