



TOWN OF HAMILTON

STAFF MEMORANDUM

TO: Planning Board members
FROM: Mark Connors, Planning Director
RE: Working Draft – Accessory Dwelling Unit revisions
FOR: January 7, 2025 Planning Board meeting

The following draft changes to Section 3.6 of the Zoning Bylaw represent a first attempt at proposed amendments to the Bylaw to accommodate recent changes in state law relating to Accessory Dwelling Units (ADUs). This draft will likely undergo changes pending reviews by the Planning Board, Building Commissioner, the Zoning Board of Appeals and other interested parties. This draft includes provisions added by both the Planning Board Chair and the Planning Director. As you read the proposed changes, please be aware of a few considerations:

The state has conferred ADUs as a protected, by right, use under the Zoning Act. Currently the Zoning Board of Appeals reviews ADU applications as part of Special Permit applications. Moving forward, the Town cannot require discretionary reviews of ADU applications.

The Bylaw cannot enforce any regulations relating to ADUs that would be prohibitive, i.e. any requirements that would completely foreclose any possibility of an ADU on a Lot. For example, the Town could not prohibit ADUs on lots that do not meet a certain size requirement. However, the Town could require additional layers of review for such lots – i.e. Site Plan Review and potentially a finding by the ZBA – to advance such applications.

Any requirements outlined under this section must be clear and objective. The Bylaw, for example, could require a stockade fence or landscape screening be provided when an ADU is sited within a certain distance of a property boundary. More problematic, however, would be a requirement that “Sufficient landscaping must be provided,” as this requirement leaves too much open to interpretation.

Please also keep in mind that this is a new area of state law and the Commonwealth’s ADU requirements are not yet final. The ability of Town staff and the Town’s legal counsel to provide definitive guidance in certain areas may be limited as this information is quite new and there is no history of caselaw for ADUs as a protected use.

I look forward to reviewing the draft with you and incorporating your feedback.

**DRAFT OF AMENDMENTS TO ZONING BYLAW TO ADDRESS THE PROVISIONS
OF THE AFFORDABLE HOMES ACT**

**3.1 PRINCIPAL USES. CORRECT THE SECTION AND THE TABLE OF USE
REGULATIONS TO CONFORM WITH WHAT WAS APPROVED AT TOWN MEETING**

It appears that, apart from the Table of Use Regulations, the errors in this section that appear in the Zoning Bylaw on the Town's website, when compared with the 2016 Zoning Bylaw adopted at Town Meeting, involve word capitalization and minor errors.

3.2 ACCESSORY USES

3.3 HOME OCCUPATIONS

3.4 CONVERSION FOR TEMPORARY ADDITIONAL LIVING AREA.

3.5 CONVERSION TO TWO-FAMILY DWELLING.

It appears that the errors in the foregoing four sections of the Zoning Bylaw that is on the Town's webpage, when compared with the 2016 Zoning Bylaw presented at Town Meeting, involve word capitalization and other minor errors.

**3.6 ACCESSORY APARTMENTS -DELETE AND REPLACE WITH NEW SECTION 3.6
BELOW – NOTE THAT EXISTING SECTION 3.6 WAS ADOPTED AT A SPECIAL
TOWN MEETING ON OCTOBER 13, 2018. THE ACTUAL LANGUAGE THAT WAS
INCLUDED AS AN APPENDIX TO THE WARRANT IS NOT AVAILABLE ON THE
TOWN'S WEBSITE.**

3.7 ACCESSORY APARTMENTS FOR LARGER LOTS

**NOTE; Section 4.0, Section 5.0 and 6.0, as well as Section 11 of the Zoning Bylaw will also
have to be examined and amended if necessary.**

3.6 ACCESSORY DWELLING UNITS.

3.6.1. Purpose.

The intent of this Section is to allow Accessory Dwelling Units for the following purposes:

1. Add moderately-priced rental units to the housing stock to meet the needs of small households, both young and old;
2. Make housing units available to moderate-income households who might otherwise have difficulty finding housing in the Town;
3. Provide homeowners with a means of obtaining rental income, companionship, security, and services, and thereby to enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave; and

4. Provide more diverse housing options in the community in a manner that does not conflict with the residential character of single-family neighborhoods.

3.6.2. Permit Granting Authority. [The Zoning Board or Appeals shall review the information and materials required by this Section as it pertains to a single proposed Accessory Dwelling Unit as a predicated to submission of an application for a building Permit to the Building Commissioner. The Building Commissioner shall not consider any application for a Building Permit without a decision from the Board of Appeals confirming that the requirements of this Section have been satisfied.]

3.6.3. Procedure and Requirements for Detached Accessory Dwelling Units. An Application for a Permit to construct a detached Accessory Dwelling Unit must:

1. Be signed by 100% of the record title ownership interests in the Principal Dwelling unit and a copy of the deed to the Owner/applicant. If ownership is held in other than by an individual, applicant shall submit a Schedule of Beneficiaries or other evidence of ownership satisfactory to the Planning Board.
2. Include a floor plan of the Accessory Dwelling Unit, whether in the Principal Dwelling unit or a detached to it, such as a barn, garage, or other such building, on the Lot where it is to be located, and all elevations where exterior modifications are proposed.
3. Include a Site Plan is required to show access, parking, entry, and other essential site features. All plans shall be drawn to scale and identify the existing structure and proposed detached Accessory Dwelling Unit.
- 4 Include written verification from the Board of Health that the sewage disposal system shall have sufficient capacity to accommodate the detached Accessory Dwelling Unit within Title 5 of the State Environmental Code and the Rules and Regulations of the Board of Health.
4. Meet setback and dimensional regulations applicable to the Principal Dwelling unit, as well as other applicable dimensional controls as set forth in Section 4.1.2, Table of Dimensional Regulations. In no event may a detached Accessory Dwelling Unit be set back a distance less than the Principal Dwelling unit regardless of whether the dimensional regulations set forth in Section 4.1.2 would permit otherwise.
5. Have a permanent foundation; no trailers o recreational vehicles will be permitted as detached Accessory Dwelling Units.
6. An Accessory Dwelling Units shall maintain the appearance and essential character of the Principal Dwelling unit, specifically with respect to height, compatible roof pitch, and choice of building materials; if located in a residential district, an Accessory Dwelling Unit shall not change the characteristics of the residential district in which it is located, shall maintain the prevailing scale of buildings in the neighborhood, and shall relate harmoniously with the surrounding area.

Commented [MC1]: We cannot require ZBA approval for a Protected by right use. We may be able to require a ZBA finding in certain cases, particularly if there is a question about whether an application meets the requirements.

7. Complies with the fire code, 527 CMR 1.00.

8. ~~Be-If proposed~~ in an Accessory Structure as set forth in Section 3.2.2 with a gross building footprint, including appurtenant uses, such as porches and decks, of less than 1,000 square feet and Section 3.6.6.2.b applies.

3.6.4. Procedure and Requirements for Accessory Dwelling Unit within or attached to the Principal Dwelling unit. An Applications for a Permit to construct an Accessory Dwelling Unit within or attached to the Principal Dwelling unit must:

1. Be signed by 100% of the record title ownership interest of the Principal, single family Dwelling unit and shall include a copy of the deed to the Owner/applicant. If ownership is held in other than by an individual, applicant shall submit a Schedule of Beneficiaries or other evidence of ownership satisfactory to the Planning Board.
2. Include a floor plan of the Accessory Dwelling Unit whether within the Principal Dwelling Unit or attached to it either as an addition to the height of any portion of the Principal Dwelling Unit or as an attached addition to the Principal Dwelling Unit on the Lot where it is to be located, and all elevations where exterior modifications are proposed.
3. Include a site plan to show access, parking, entry, and other essential site features. All plans shall be drawn to scale and identify the existing structure and proposed modifications to create the Accessory Dwelling Unit.
4. Provide that the location of any new outside entrance to serve the Accessory Dwelling Unit be located on the side or in the rear of the Principal Dwelling unit, unless the Zoning Board of Appeals determines otherwise given the layout and function of the building.
5. Be constructed within the Principal Dwelling unit so that the Accessory Dwelling Unit either shares a common floor-ceiling assembly with the Principal dwelling or a common wall connector.
6. Modifications to the exterior of the Principal Dwelling unit intended to contain an Accessory Dwelling Unit shall be completed in a manner that maintains the appearance of the principal Dwelling unit, specifically with respect to height, compatible roof pitch, and choice of building materials.
7. Include written verification by the Board of Health that the sewage disposal system shall have sufficient capacity to accommodate the Apartment within Title 5 of the State Environmental Code and the Rules and Regulations of the Board of Health.

3.6.5 General Requirements.

1. All Dimensional regulations set forth in Section 4.0 for ~~Lots and~~ structures along with all other applicable zoning requirements for the residential districts in which the proposed Accessory Dwelling Units is to be located shall apply unless specifically addressed within this Section.

2. Accessory Dwelling Units shall be allowed only as accessory to a single-family Dwelling Unit.

3. No more than one (1) Accessory Dwelling Unit shall be allowed on any Lot ~~without the issuance of a Site Plan Review~~ except as permitted under Section 3.6.7.

4. The Accessory Dwelling Unit shall not be held in, or transferred into separate ownership from, the Principal Dwelling under a condominium, cooperative or any other form of ownership.

5. An Accessory Dwelling Unit shall not be used in any way for any commercial purpose or activity, regardless of other provisions of the Zoning Bylaw.

6. An Accessory Dwelling Unit shall have its own house number visible from the exterior of the unit.

7. ~~An Accessory Dwelling Unit must be a complete, separate housekeeping unit that functions as a separate unit from the Principal Dwelling unit.~~

Commented [MC2]: I believe this requirement is addressed under the definition of ADU.

8. The Accessory Dwelling Unit shall contain no more than two (2) bedrooms and one (1) bathroom; and the Accessory Dwelling Unit shall not exceed the gross floor area of the Principal Dwelling unit or 900 square feet of gross floor area whichever is smaller.

9. A landscape plan shall illustrate any new entrances, parking areas, and any other added physical development which in the opinion of the Zoning Board of Appeals deserves landscape treatment. This provision will not be used as a means of requiring the pre-existing property to be re-landscaped but will specially focus on the aesthetics of the new site features.

Commented [MC3]: This requirement would be difficult to enforce since the ZBA would not be reviewing ADU applications except in rare circumstances. We could require a Landscape Plan but would have to be specific about what areas would need to be landscaped/screened.

10. At least one (1) off street, on site, parking space must be available for exclusive use by occupants of the Accessory Dwelling Unit or their invitees, unless said Accessory Dwelling Unit is within 0.5 miles of a commuter rail station.

11. In the R-1A, R-1B, and RA Districts, ~~an Accessory Dwelling Units proposed on a lot shall not be allowed if the Principal Dwelling unit is located on a Lot that is non-confirming for lack of required Lot area, unless said Lot is at least less than 10,000 square feet in size. An Accessory Dwelling unit may be permitted in such circumstance cases only if the Board of Health and the Board of Appeals determine the Lot can accommodate the Accessory Dwelling Unit which provides on-site, off-street parking, if required under 3.6.5.13 in conformance with the applicable requirements of this Section, and the Board of Health provides confirmation that the Lot has the capacity to address the septic system demands of the Accessory Dwelling Unit.~~

Commented [MC4]: We address this requirement in other sections of the Bylaw

12. ~~Alterations to accommodate an Accessory Dwelling Unit shall be limited to one (1) detached Accessory Dwelling Unit or addition to the Principal Dwelling unit on the Lot.~~ If the Accessory Dwelling Unit is located-proposed on a Lot smaller than 10,000 square feet, then ~~the alterations~~ necessary to accommodate the Accessory Dwelling Unit shall not expand the footprint or the envelope of the Principal Dwelling unit, as it existed on

Commented [MC5]: This requirement is addressed in other sections of the Bylaw.

the effective date of this bylaw section, by more than twenty-five (25) percent, or five hundred (500) square feet, whichever is less.

13. The sanitary disposal system for the Accessory Dwelling Unit and Principal Dwelling unit shall comply with the applicable Hamilton Board of Health and Title 5 Regulations, provided compliance of the sanitary disposal system shall not require the application of Subpart E of 310 CMR 15.00.

14. Utilities such as water, electric, oil, and gas necessary for the Accessory Dwelling Unit shall be extensions of the existing utilities serving the Principal Dwelling Unit. No new utility services or meters shall be installed for the use of the Accessory Dwelling Unit.

Commented [MC6]: This requirement would be a good discussion point for the Board. Some communities take the opposite approach of requiring separate utility meters for the ADU.

15. Notice of change in tenancy of either the Principal Dwelling Unit or the Accessory Dwelling Unit shall be given to the Building Commissioner and Board of Health prior to new occupancy to assess compliance with applicable requirements within their respective jurisdictions.

16. No additional curb cut will be authorized for access to the Accessory Dwelling Unit ~~except as authorized by the Zoning Board of Appeals.~~

Commented [MC7]: Since the ZBA would no longer be reviewing ADU applications except in rare circumstances, I removed this requirement. If the Board wanted to maintain a form of relief from this requirement, I would add language requiring Site Plan Review for such applications and allowing the Planning Board to waive the requirement.

17. No accessory pool or garage shall be constructed to serve the Accessory Dwelling Unit if a pool or garage exists on the Lot to serve the Principal Dwelling unit.

18. Violation of any of the above provisions shall be subject to enforcement by the Building Inspector in accordance with the applicable provisions of Section 10.00 Administration and Enforcement of the Zoning Bylaw.

19. Short term rentals as defined in M.G.L. ch. 64G, §1 ~~are prohibited~~ are prohibited in Accessory Dwelling Units created under this section.

DEFINITIONS -Move to Section 11; reformulate and add definitions consistent with Regulations

Accessory Dwelling Unit: ___ A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in gross floor area than 1/2 the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short term rental, as defined in section 1 of chapter 64G; provided, however, that no municipality

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shall unreasonably restrict the creation or rental of an Accessory Dwelling Unit that is not a short-term rental.

Gross Floor Area: The sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.

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Owner: _____ The individuals in whom record title ownership is held. If ownership is held in a trust or other non-individual ownership, the beneficiaries.

Commented [MC8]: Added State's definition as placeholder. Will seek out Building Commissioner's input on this.

SECTION 3.6.6. ~~SITE PLAN REVIEW~~ Site Plan Review. Pursuant to Section 10.4 of the Zoning Bylaw, the Planning Board shall hear and decide applications for Site Plan Approval when required or Accessory Dwelling Units.

1. Site Plan Review. Site Plan review by the Planning Board under Section 10.6 of the Zoning Bylaw shall be required for an Accessory Dwelling Unit if an application meets any of the following criteria:

- a. The Accessory Dwelling Unit is proposed on a parcel that is smaller than 20,000 square-feet.
- b. The Accessory Dwelling Unit proposed is a new detached structure, and the Zoning Board of Appeals determines that such structure may adversely implicate Article XVII of the General Bylaw, General Wetlands Protection/Conservation Bylaw, Article XXIX of the General Bylaw, Stormwater Management, or any other bylaw or other applicable State or Town regulation that relate to public health and safety such that Site Plan Review and approvals by other boards are required.
- c. The Accessory Dwelling Unit is attached to the Principal Dwelling unit and its construction would result in any of the following:
 - i. An increase in the height of the Principal Dwelling Unit; or
 - ii. An increase in the gross building footprint of the Principal Dwelling unit by more than 35 percent.
- d. The Owner/applicant seeks to add an Accessory Dwelling Unit when an Accessory Dwelling Unit previously has been permitted, unless Section 3.6.6.2.d applies.

Commented [MC9]: I believe this reference is incorrect.

e. A second Accessory Dwelling Unit is proposed on a Lot in conformance with the requirements of Section 3.6.6.

2. Exemptions from Site Plan Review. Applications for Accessory Dwelling Units shall be exempt from Site Plan Review if all the following criteria are met and Section 3.6.6.1 does not apply:

- a. The proposed detached Accessory Dwelling Unit does not exceed two stories or twenty-five (25) feet in height;
- b. The Accessory Dwelling Unit is proposed inside an existing detached Accessory Structure constructed before the effective date of this Section of the Zoning Bylaw amendment and the Accessory Structure complies with the current Table of Dimensional Regulations set forth in Section 4.1.2 of this Bylaw; and
 - i. Renovations to the existing Accessory Structure necessary to accommodate the Accessory Dwelling Unit will not result in an increase in the height of the Accessory Structure; and
 - ii. Renovations to the existing Accessory Structure necessary to accommodate the Accessory Dwelling Unit will not result in an increase of the gross building footprint of the Accessory Structure of more than 15 percent.

~~c. For larger Lots, a second Accessory Dwelling Unit may be permitted without Site Plan Review under 10.6, despite the provisions of Section 3.6.5.3, if:~~

~~i. The Lot is twice the minimum Lot size for the zoning district in which the Lot is located, and the existing and proposed Accessory Dwelling Units, when combined, are such that one Accessory Dwelling Unit is within or attached to the Principal Dwelling Unit and the other is detached from the Principal Dwelling unit. In no event may there be two detached Accessory Dwelling Units on a Lot or two Accessory Dwelling Units within or attached to the Principal Dwelling unit on a Lot without Site Plan Review.~~

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Commented [MC10]: Moved to later section – Would maintain PB Site Plan Review for second ADU.

3. Site Plan Review Requirements.

- a. The Site Plan Review decision of the Planning Board shall be recorded at the Registry of Deeds or registered at the local Registry division of the Land Court.
- b. Prior to the issuance of a building Permit, the Owner/applicant must submit proof of the recording or registration of the Site Plan Review decision to the Building Commissioner and the ~~Director of Planning and Inspectional Services~~ Planning Director.

5. Termination of Site Plan Review or Permit. The Permit shall terminate immediately upon any of the following events:

- a. Two Years from the date of the grant of the Permit, if a substantial use thereof has not commenced, or in the case of a Permit for construction, if construction has not commenced within one year from the date of the grant of the Permit.

b. Violation of any term or condition of the Permit if the Owner fails to cure the violation within two weeks of written notice mailed by certified mail, return receipt requested.

SECTION 3.6.7 Accessory Dwelling Units on Large Lots. For larger Lots, a second Accessory Dwelling Unit may be permitted without Site Plan Review under 10.6, despite the provisions of Section 3.6.5.3, if:

i. The Lot is twice the minimum Lot size for the zoning district in which the Lot is located, and the existing and proposed Accessory Dwelling Units, when combined, are such that one Accessory Dwelling Unit is within or attached to the Principal Dwelling Unit and the other is detached from the Principal Dwelling unit. In no event may there be two detached Accessory Dwelling Units on a Lot or two Accessory Dwelling Units within or attached to the Principal Dwelling unit on a Lot without Site Plan Review.

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Commented [MC11]: Moved to later section – Would maintain PB Site Plan Review for second ADU.

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