

## MEMORANDUM

To: Hamilton Select Board

From: Marnie Crouch, Chair, Hamilton Planning Board

Re: Proposed Amendments to Section 3.0 and Section 11.0 of the Hamilton Zoning Bylaw

Date: January 30, 2025

Pursuant to G.L. ch. 40A, §5, the Planning Board is hereby initiating the following amendments to Section 3.0 and Section 11.0 of the Hamilton Zoning Bylaw and requests that the Select Board include the proposed amendments on the Warrant for the annual 2025 Town Meeting. In accordance with G. L. ch. 40 A, §5, the Planning Board requests that the Select Board refer the proposed amendments to Section 3.0 and Section 11.0 back to the Planning Board for a public hearing and a report and recommendation to Town Meeting. Below is a summary of the proposed amendments. The text of the existing Zoning Bylaw Section 3.0 and Section 10.00 with the proposed change follows the summary.

### BACKGROUND

On August 6, 2024, the Governor signed into law Chapter 150 of the Acts of 2024, “An Act relative to the Affordable Homes Act” (the “Act”), which amends the Zoning Act, G.L. c. 40A, in significant ways. One specific way the Act amended the Zoning Act was to provide new requirements for Accessory Dwelling Units. These new requirements in Section 8 of the Act will take effect on February 2, 2025, 180 days following the date on which the Act was enacted.

The Act creates a statewide definition of Accessory Dwelling Units (“ADU”) and establishes uniform rules governing their creation. The Act makes ADUs “as of right” in every city and town and supersedes any existing inconsistent local bylaws.

In addition, the Act:

- Removes the ability of cities and towns to impose owner occupancy requirements on ADUs or the principal dwellings;
- Affirms the ability of municipalities to regulate, or prohibit, short-term rental of ADUs; and
- Clarifies that the square footage reference in the definition applies to Gross Floor Area, a newly defined term.

In view of the comprehensive nature of the Act’s provisions with respect to ADUs, the Planning Board, with the assistance of the Building Commissioner and the Planning Director, examined all provisions of Section 3.0 and proposes the following amendments:

- Amendments to section E. ACCESSORY in the Table of Use Regulations by eliminating item 2, Conversion for Temporary Living (Section 3.4), item 3, Accessory Apartment (Section 3.6), and item 4. Accessory Apartment on Large Lot (Section 3.7) and adding

item 2, Accessory Dwelling Units by right (Section 3.6), and Large Accessory Dwelling Units that do not comply with Section 3.6.

- Elimination of Section 3.4 and reservation of that section number for potential future use. As confirmed by the Building Commissioner, the provisions of Section 3.4 were not used and have never been enforced.
- Replacement of existing Section 3.6 with a new Section 3.6 that complies with the provisions of the Affordable Homes Act.
- Elimination of Section 3.7 as it is superfluous considering the provisions of the Affordable Homes Act.

**PROPOSED WARRANT ARTICLE**

To see if the Town will amend the Hamilton Zoning Bylaw by making the changes to Section 3.0, Table of Use Regulations, and Section 11.0, Definitions, as set forth below with language to be deleted in strikethrough and language to be added in bold and underlined, or to take any action relative thereto.

**TABLE OF USE REGULATIONS**

<b>E. ACCESSORY</b>	R-1A	R-1B	RA	B
1. Up to three boarders in a Single Family Dwelling	Y	Y	Y	Y
<del>2. Conversion for Temporary Living (see Section 3.4).</del>	<del>ZBA</del>	<del>ZBA</del>	<del>ZBA</del>	<del>ZBA</del>
<del>3. Accessory Apartment (see Section 3.6).</del> <b><u>Accessory Dwelling Unit (see Section 3.6 and definition).</u></b>	<del>ZBA</del> <b><u>Y</u></b>	<del>ZBA</del> <b><u>Y</u></b>	<del>ZBA</del> <b><u>Y</u></b>	<del>ZBA</del> <b><u>Y</u></b>
<del>4. Accessory Apartment on Large Lot (see Section 3.7).</del> <b><u>Large Accessory Dwelling Unit (see Section 11.0)</u></b>	<del>ZBZ</del> <b><u>PB</u></b>	<del>ZBA</del> <b><u>PB</u></b>	<del>ZBA</del> <b><u>PB</u></b>	<del>ZBA</del> <b><u>PB</u></b>
5. Customary home occupation conducted in a Dwelling or Building accessory thereto by a person residing on the premises (see Section 3.3)	Y	Y	Y	Y
6. Accessory Uses or Building on the same Lot with and customarily incidental to a permitted main use on the same site.	Y	Y	Y	Y
7. Uses whether or not on the same parcel as activities permitted as a matter of right, which are both(a) accessory to activities permitted as of right, and (b) necessary in connection with scientific research or scientific development or related production (see Section .3.2.1.2).	ZBA	ZBA	ZBA	ZBA
8. Parking area or garage for use of employees, customers or visitors.	N	N	N	Y

9. Level Two Electric Charging Station.	Y	Y	Y	Y
10. Large Family Child Care Home.	ZBA	ZBA	ZBA	ZBA
11. Small Family Child Care Home.	Y	Y	Y	Y
12. Adult Social Day.	ZBA	ZBA	ZBA	ZBA

**3.4 CONVERSION FOR TEMPORARY ADDITIONAL LIVING AREA. RESERVED.**

~~3.4.1 Purpose. The purpose of this Section is to provide a way for families to create separate living quarters in their home to accommodate a temporary family, health, or security need by permitting construction of one temporary additional living area in a Single Family Dwelling, or an Accessory Building, subject to the following.~~

~~3.4.2 Procedures. A conversion for a temporary additional living area under this Section shall be authorized only by Special Permit issued by the Board of Appeals under Section 10.5 of this Bylaw. The Board of Appeals may grant such a Special Permit provided the following conditions are met:~~

- ~~1. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.~~
- ~~2. The Occupancy Permit for the Principal Dwelling unit must have been issued at least two (2) years prior to the application for the Special Permit.~~
- ~~3. One (1) of the dwelling units shall be occupied by the owner of the property, except for bona fide temporary absence.~~
- ~~4. The temporary additional living area must be for use by the owner(s), or a family member of the owner(s), or a caretaker or a health care provider to the occupant, of one (1) of the Dwelling Units; or an elderly person; or a mentally or physically handicapped person.~~
- ~~5. There is no other accessory dwelling unit on the lot on which the proposed Accessory Dwelling Unit is to be located.~~
- ~~6. The applicant has submitted to the Board of Appeals a plot plan and scaled architectural drawings which comply with Section 3.4.4 below.~~

~~3.4.3 Renewal. Renewal of the Special Permit shall take place every four (4) years from the date of issuance of the Special Permit and upon change of ownership or tenants. Renewal of the Special Permit will require an inspection by the Building Commissioner and a written certification by the owner and Building~~

~~Commissioner, verifying that the terms of the Special Permit and this Bylaw are being met. The Building Commissioner shall verify that all means of access and egress have been maintained, and that there has been no change in the occupancy, design, or dimensional standards under this Section.~~

~~3.4.4 Design and Dimensional Standards. A plot plan and scaled architectural drawings of the existing dwelling unit, the proposed accessory dwelling unit, and any proposed addition shall be submitted, showing location of the building on the lot, proposed addition, location of septic system and parking, and compliance with this Section and the following items:~~

- ~~1. The maximum Residential Gross Floor Area of the proposed accessory dwelling unit shall not exceed the lesser of one thousand (1,000) square feet or one third (1/3) of the Residential Gross Floor Area of the existing dwelling unit and the proposed accessory dwelling unit combined, as measured after conversion;~~
- ~~2. Any extension to the building shall not create more than a twenty five (25) percent increase in the Residential Gross Floor Area of the existing structure.~~
- ~~3. The maximum number of bedrooms shall be one (1).~~
- ~~4. The maximum number of tenants shall be two (2).~~
- ~~5. The lot on which the proposed accessory dwelling unit is to be located shall contain at least ten thousand (10,000) square feet.~~
- ~~6. The external appearance of the building in which the Accessory Dwelling Unit is located shall not be significantly altered from a single family dwelling unit.~~
- ~~7. The kitchen facilities shall be of a type readily removable.~~
- ~~8. Adequate provision shall be made for egress to the outside from the accessory dwelling unit; any external stairways shall be screened from view, buffered, or located out of sight from any street.~~
- ~~9. One off street parking space shall be provided for the new dwelling unit, in addition to the required parking for the Principal Dwelling Unit. Every effort shall be made to minimize the visibility of the additional parking space by location and screening.~~

~~3.4.5 Other Approvals. The applicant shall, in addition to obtaining a Special Permit, also obtain a Building Permit, any necessary Conservation Commission approvals, and an Occupancy Permit, prior to the occupancy of the Temporary Additional Living Area.~~

~~3.4.6 Special Restrictions.~~

- ~~1. The occupancy of the apartment shall be by the apartment tenant(s) for whom it was issued. Upon cessation of occupancy by such tenant(s), the permit shall lapse and be null and void the Building Commissioner shall be notified of this event and the kitchen facilities shall be removed by the owner.~~
- ~~2. One (1) of the dwelling units shall continue to be occupied by the owner of the property, except for bona fide temporary absence.~~

## **SECTION 3.5 CONVERSION TO TWO-FAMILY DWELLING. [No change]**

### **3.6 ACCESSORY APARTMENTS**

## Accessory Apartments

### 3.6.1. Purpose and Intent

The intent of this section is to allow Apartments in owner-occupied single-family dwellings. Its purpose is to:

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 older homeowners with a means of obtaining rental income, companionship, security and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.

### 3.6.2. Special Permit Granting Authority

1. The Zoning Board of Appeals is the Special Permit Granting Authority (SPGA) under this Bylaw section.

### 3.6.3. Procedure

Applications to the SPGA for a Special Permit must provide the following:

1. Be signed by 100% of the record title ownership interest of a single-family detached dwelling and shall include a copy of the deed to the 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 SPGA.
2. Include a floor plan of the Apartment, whether in the main dwelling or a detached structure 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. Additionally, 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 modifications to create the Apartment.
3. 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.

### 3.6.4. Requirements

1. Modifications of the exterior of the dwelling shall be completed in a manner that maintains the appearance of the dwelling as a single-family dwelling.
2. Modifications of the exterior of the detached accessory building intended to house the Apartment shall maintain the appearance and essential character of the accessory structure.

- ~~3. The Apartment will be a complete, separate housekeeping unit that functions as a separate unit from the principal dwelling.~~
- ~~4. The Apartment shall contain no more than two (2) bedrooms and one (1) bathroom; and the apartment shall not exceed 900 S.F. of gross floor area of the building in which the Apartment is to be located.~~
- ~~5. Any new outside entrance to serve an Apartment shall be located on the side or in the rear of the building unless the SPGA deems otherwise appropriate given the layout and function of the building.~~
- ~~6. A landscape plan shall illustrate any new entrances, parking areas and any other added physical development which in the opinion of the SPGA deserves landscape treatment. This provision will not be used as a means to require the pre-existing property to be re-landscaped but will specially focus on the aesthetics of the new site features.~~
- ~~7. The Apartment shall not be held in, or transferred into separate ownership from, the principal dwelling under a condominium or cooperative form of ownership, or otherwise. An Apartment shall not be used in any way for any commercial purpose or activity, regardless of other provisions of the Zoning Bylaw.~~
- ~~8. At least one (1) off street, on site, parking space must be available for exclusive use by occupants of the Apartment or their invitees.~~
- ~~9. In the R-1A, R-1B, and RA Districts, accessory apartments shall not be allowed in single family dwellings located on lots that are non-confirming for lack of required lot area, unless said lot is at least 10,000 S.F. in size unless the SPGA determines that a lot smaller than 10,000 S.F. is capable of accommodating an Apartment which provides on-site, off-street parking and has confirmation from the Board of Health that the site can address its septic system demands.~~
- ~~10. Alterations to accommodate an Apartment shall be limited to one (1) structure on the lot. If the dwelling is located on a lot smaller than 10,000 square feet, then the alterations shall not expand the footprint or the envelope of the building, as it existed on the effective date of this bylaw section, by more than twenty-five (25) percent, or five hundred (500) S.F., whichever is less.~~
- ~~11. The Owner of the lot shall reside on the property in either the principal dwelling or the accessory apartment.~~
- ~~12. The sanitary disposal system for the Apartment and principal structure shall comply with the applicable Hamilton Board of Health and Title 5 Regulations, provided that compliance of the sanitary disposal system shall not require the application of Subpart E of 310 CMR 15.00.~~
- ~~13. Utilities such as water, electric, oil, and gas necessary for the Apartment shall be extensions of the existing utilities serving the principal single family dwelling. No new utility services or meters shall be installed for the use of the Apartment.~~

~~14. The Special Permit shall be issued to the Owner and shall specify which dwelling unit will be Owner-occupied.~~

~~15. The Special Permit shall be recorded at the Registry of Deeds or registered at the local Registry division of the Land Court. Prior to the issuance of a building permit, the applicant must submit proof of the recording or registration of the Special Permit to the Building Inspector and the Director of Planning and Inspections. When a structure which has received a Permit for an Apartment is sold, the new Owner, if he or she wishes to continue to exercise the Permit, must within thirty (30) day of the sale, submit a sworn and notarized written statement to the Building Inspector stating that he or she will occupy either the principal dwelling or the Apartment on the premises as their primary year-round residence.~~

~~16. No more than one (1) Apartment shall be allowed on any lot. The creation of an Apartment within a principal single family residence must be done so that the Apartment either shares a common floor ceiling assembly with the principal dwelling or a common wall connector as defined in Section 11.0 of this Zoning Bylaw.~~

~~17. 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.~~

### 3.6.5 Termination

The Special Permit shall terminate immediately upon any of the following events:

- ~~1. Two Years from the date of the grant of the Special Permit, if a substantial use thereof and 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 Special Permit.~~
- ~~2. Violation of any term or condition of the Special Permit that the Owner fails to cure within two weeks' written notice mailed by certified mail, return receipt requested.~~

### DEFINITIONS

~~Apartment: An additional dwelling unit, subordinate in size and accessory to the principal dwelling unit on the lot, located in either the principal dwelling or an accessory structure on the lot. An Apartment is constructed so as to maintain the appearance and essential character of the single family dwelling or accessory structure to which it is added.~~

~~Owner: The individuals in whom record title ownership is held. If ownership is held in a trust or other non-individual ownership, the beneficiaries as shown on a Schedule of Beneficiaries or other evidence of ownership.~~

### 3.6 ACCESSORY DWELLING UNITS.

**3.6.1 Purpose. The intent of this Section is to permit an Accessory Dwelling Units (see Section 11.0, Definitions) on a Lot that contains a principal dwelling unit (hereinafter referred to as the Principal Dwelling unit) 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 Hamilton;**
- 3. Provide homeowners with a means of obtaining rental income, companionship, security, and services, and thereby 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 Building Commissioner shall be the permit-granting authority for Accessory Dwelling Units provided that the application meets the minimum requirements of this Section. In considering applications, all definitions contained in this Bylaw shall apply, unless those definitions conflict with the definitions in the Regulations governing Protected Use Accessory Dwelling Units in which case the definitions in the Regulations shall control (see 760 CMR 71.01 et seq.).**

**3.6.3 Where Permitted. An Accessory Dwelling Unit shall be permitted by right in all zoning districts where single-family dwellings are a permitted use, provided that the Accessory Dwelling Unit meets the minimum requirements of this Section. Accessory Dwelling Units may be attached to the Principal Dwelling unit (hereinafter referred to as an Attached Accessory Dwelling Unit) or located in a separate accessory structure (hereinafter referred to as a Detached Accessory Dwelling Unit).**

**3.6.4 Required Application Materials for Accessory Dwelling Units. An Application for a building permit to construct an Accessory Dwelling Unit must include the following minimum materials:**

- 1. A Building Permit application showing compliance with the requirements of this Section of the Bylaw, the Building Code, and all other applicable requirements, including, but not limited to, those governing the Hamilton Historic District.**
- 2. A Certified Plot Plan demonstrating compliance the Zoning Bylaw and all other applicable codes and regulations.**
- 3. Elevations depicting all building facades of the Accessory Dwelling Unit. The elevations shall include all exterior building materials.**
- 4. Written verification from the Board of Health that the sewage disposal system(s) shall have sufficient capacity to accommodate the Accessory Dwelling Unit in**



accordance with Title 5 of the State Environmental Code and the Rules and Regulations of the Board of Health.

3.6.5 Requirements for Accessory Dwelling Units. All Accessory Dwelling Units are subject to the following requirements:

1. Only one Accessory Dwelling Unit shall be permitted on each Lot containing a Principal Dwelling Unit. single-family dwelling.

2. An Accessory Dwelling Unit shall not exceed 50 percent of the Gross Floor Area of the Principal Dwelling Unit or 900 square feet of Gross Floor Area, whichever is smaller.

3. An Accessory Dwelling Unit shall meet the applicable dimensional requirements set forth in Section 4.1.2, Table of Dimensional Regulations, including Regulations for Maximum Building Height, Maximum Number of Stories, Maximum Building Coverage, and Minimum Front, Side and Rear yards, except as stipulated in this Section. When attached to a Principal Dwelling unit, the Attached Accessory Dwelling Unit shall meet the required setback requirements for the Principal Dwelling unit.

4. An Accessory Dwelling Unit must have a permanent foundation; no trailers or recreational vehicles shall be permitted to serve as such a use.

5. An Attached Accessory Dwelling Unit 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.

6. A Detached Accessory Dwelling Unit shall not be permitted in the Front Yard (as defined under Section 11.0, Definitions) of the Lot, absent a special permit.

7. The location of any new outside entrance to serve an Attached Accessory Dwelling Unit shall be located on the side or in the rear of the Principal Dwelling unit.

8. Appurtenant uses exclusively serving an Accessory Dwelling Unit that do not count toward the maximum Gross Floor Area, including porches, decks, and similar structures, shall be limited to a combined total size of no more than one hundred and fifty (150) square-feet.

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

10. A Detached Accessory Dwelling Unit shall have its own house number visible from the exterior of the unit.

11. At least one (1) off-street, on-site parking space shall be provided for exclusive use by occupants(s) of the Accessory Dwelling Unit or their invitees, unless the Accessory Dwelling Unit is within 0.5 miles of a commuter rail station or Bus Station

**12. No additional curb cut shall be authorized for access to serve an Accessory Dwelling Unit.**

**13. there shall be no more than one swimming pool and one detached garage on any Lot with an Accessory Dwelling Unit.**

**14. Short term rentals as defined in G.L. c. 64G, §1 are prohibited in Accessory Dwelling Units.**

**15. An Accessory Dwelling Unit proposed in the Hamilton Historic District, which requires exterior alterations, shall meet all the applicable requirements of the Historic District Bylaw (Chapter XXXI) including review and approval by the Historic District Commission if necessary.**

### ~~3.7 ACCESSORY APARTMENTS ON LARGE LOTS.~~

~~3.7.1 Purpose.~~ The purpose of this Section is to provide for accessory apartments in a single family dwelling or in an accessory building on lots greater than ten (10) acres, subject to the following.

~~3.7.2 Procedures.~~ Such an accessory apartment shall be authorized only by Special Permit issued by the Board of Appeals under Section 10.0 of this Bylaw. The Board of Appeals may grant such a Special Permit provided the following conditions are met:

- ~~1. One of the Dwelling units is occupied by the owner of the property, except for bona fide temporary absence.~~
- ~~2. The principal Dwelling unit and the proposed accessory apartment are to be held in the same ownership.~~
- ~~3. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.~~
- ~~4. The applicant has submitted to the Board of Appeals a plot plan and scaled Architectural drawings which comply with Section 3.7.3 below.~~

~~3.7.3 Design and Dimensional Standards.~~ A plot plan and scaled architectural drawings of the existing Dwelling Unit and proposed addition shall be submitted, showing location of all Buildings on the lot, the proposed addition, location of all septic systems and parking and compliance with the following items:

- ~~1. The lot on which the proposed conversion is to be located is at least ten (10) acres.~~
- ~~2. Any external stairways shall be screened from view, buffered or located out of sight from any street.~~
- ~~3. One off street parking space shall be provided for the additional Dwelling Unit, in addition to the required parking for the principal Dwelling Unit. Every effort shall be made to minimize the visibility of the additional parking space by location and screening.~~

~~3.7.4 Other Approvals.~~ The applicant shall, in addition to obtaining a Special Permit, also obtain a Building Permit, and any necessary Conservation Commission approvals, and an Occupancy Permit prior to the occupancy of the proposed accessory apartment.

~~3.7.5 Special Restrictions.~~

- ~~1. The apartment shall not be transferred into separate ownership from the principal dwelling, including a condominium form of ownership or otherwise.~~
- ~~2. The lot upon which the principal Dwelling Unit and Accessory Apartment are located shall not be reduced in size to less than ten (10) acres.~~

## **SECTION 11.0, DEFINITIONS**

### **Section 3.0 Use 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:**

- (a) 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 Building Code for safe egress;**
- (b) is not larger in Gross Floor Area than ½ the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller; and**
- (c) 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.**

**Large Accessory Dwelling Unit: A Detached Accessory Dwelling Unit that is larger than 900 square feet or 50 percent of the size of the Principal Dwelling Unit, whichever is greater. In no event may a Large Accessory Dwelling Unit exceed 2,000 square feet.**

Accessory Use or Building: A use or building which is subordinate and customarily incidental to and located on the same lot with the principal use or building to which it is accessory, except uses accessory to scientific research, scientific development or related production, as set forth in this Bylaw, which uses need not be located on the same lot as the principal use. [No Change]

**Owner/Ownership: The individual(s) or entity, such as a trust, limited liability company, or corporation, in whom record title is held.**

**Temporary Additional Living Area:** See Section 8.1.