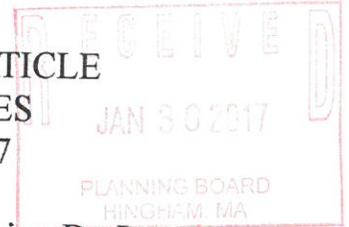


File copy

SUGGESTED CHANGES TO PROPOSED ZONING ARTICLE
RE; NONCONFORMING ACCESSORY STRUCTURES
ANNUAL HINGHAM TOWN MEETING APRIL, 2017



ARTICLE 2. Will the Town vote to amend the Town of Hingham Zoning By-Laws, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: By amending Section III-I to insert a new subsection 2, which states:

3. For the purposes of this Section III-I, the Board of Appeals may, upon making a finding that ~~the proposed change is not more detrimental to the neighborhood than the existing structure,~~ **that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law,** allow the reconstruction, extension, alteration or structural change to an existing attached or detached nonconforming structure accessory to Single or Two-Family Dwellings by Special Permit A1 provided that:
 - A. the accessory structure conformed in all respects to the Zoning By-Law in effect at the time of its initial construction: **and the extended or altered portion of the accessory structure conforms in all respects to the Zoning By-Law, and**
 - B. **no accessory structure permitted under this Section shall be used as a Dwelling unit; and**
 - C. one of the following applies:
 - (i) the reconstruction of the accessory structure is limited to the existing footprint and the resulting height does not exceed the greater of one and one-half stories or the existing height of the structure; **or**
 - (ii)(a) the reconstruction, extension, alteration or structural change of the accessory structure ~~does not further reduce the minimum linear measurement of the existing nonconforming dimensions~~ **does not increase the dimensional intrusion of the structure into applicable front, rear or sideline set-backs** or create new non-compliant dimensions: **and (b) the resulting area of incursion does not exceed 125% of the existing incursion; the resulting volume of the structure as modified by the proposed permit does not exceed 125% of the volume of the existing structure;** and (c) the resulting height does not exceed the greater of one and one-half stories or the existing height of the structure. ~~or~~
 - ~~(iii) the extended or altered portion of the accessory structure conforms in all respects to the Zoning By-Law.~~

COMMENTS ON THE SUGGESTED CHANGES TO
THE PROPOSED ZONING ARTICLE: RE NON-CONFORMING
ACCESSORY STRUCTURES FOR THE ANNUAL TOWN MEETING

The proposed Article uses the standard:

“the proposed change is not more detrimental to the neighborhood than the existing structure” MGL C. 40A s.6

for granting a Special Permit for changes to a non-conforming structure accessory to a Dwelling. This standard is the one in the MGL that applies to non-conforming **Dwellings** by which the General Court has bestowed favorable Special Permit Treatment on them. Non-conforming accessory structures on the other hand must get a variance to be altered and are subject to this standard:

“desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or By-Law.” MGL C. 40A s.10

Changing the **standard** for the granting of Special Permits for accessory structures does not make them into dwellings. They are still accessory structures (not dwellings) and the standard should be the one in the Variance law. What has changed is the elimination of the hardship test (the first test under the statute). If the applicant meets the remaining substitute tests in this Article related to footprint, volume, and height, and the structure conforms in all respects to the Zoning By-law and with no detriment to the public good, the applicant can expect a Special Permit instead of a variance.

One of the dangers with a Special Permit is that an applicant is asking not only for permission for alteration etc. of the structure but the use of that structure and it is explicit that both are granted. Accessory structures may contain living space, a bathroom (but no bathing) and a kitchen. It is a short improvement away to a Dwelling which is prohibited in our By-Law. Although our By-Law says this several times in different places, I think my proposed language in Paragraph B is needed: “no accessory structure permitted under this Section shall be used as a Dwelling unit”.

The remaining proposed draft language is merely to clarify what is intended by the proposed language.

SUGGESTED CHANGES TO PROPOSED ZONING ARTICLE
RE: NONCONFORMING ACCESSORY STRUCTURES
ANNUAL HINGHAM TOWN MEETING- APRIL, 2017

Item 2: Amend Section IV-C, 2. Location of Accessory Buildings by adding at the beginning thereof: "Unless otherwise expressly permitted in this by-Law," and change the "a" in "Accessory" from upper case to lower case.

WITH PROPOSED ZBA CHANGES, SUB-SECTION 2 WOULD READ:

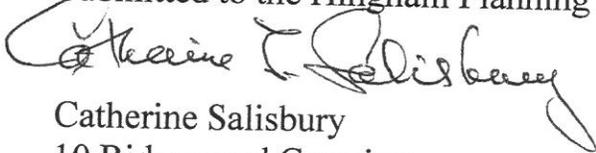
"2. Location of Accessory Buildings

Unless otherwise expressly permitted in this By-Law, accessory buildings shall not be located nearer the lot line than the minimum dimensions of the front, side, or rear yards and shall be no more than two stories and shall not exceed 30 feet in height."

I do not think Item 2 belongs in this Article which deals with existing non-conforming structures accessory to residences. Item 2 deals with **new** Accessory Structures under Section IV-C which should meet our Zoning Code or not be built at all. If the variance provisions present in the MGL and the Hingham Zoning Code do permit variances from our zoning requirements, they should be noted as the source of that authority in this text whereby such permission may be achieved. Allowing **new** accessory structures to vary from the zoning requirements is bad practice and should be limited to hardship cases. Proposing this change to our Zoning Code in what appears to be an Article on another unrelated topic is confusing at best. It should appear as a separate article either this year or next.

Or act on anything related thereto?

Submitted to the Hingham Planning Board at their Public Hearing, 1/10/17 by;



Catherine Salisbury
10 Ridgewood Crossing

Jan. 30, 2017