

HINGHAM ACCESSORY DWELLING UNIT MINUTES

July 12, 2022 @ 7:00 PM

REMOTE MEETING

ADU Members Present Remotely: Jenn Gay Smith, Chair, Matthew Curran, Diane DeNapoli, Beth Rouleau, Tracy Shriver

Absent: Gerry Allen and Robyn Maguire

Also Present: Emily Wentworth, Community Planning Director; Michael Silveira, Senior Planner

At 7:05 p.m. The Chair called the meeting to order and stated the following:

This meeting is being held remotely as an alternate means of public access pursuant to Chapter 20 of the Acts of 2021 temporarily amending certain provisions of the Open Meeting Law. You are hereby advised that this meeting and all communications during this meeting may be recorded by the Town of Hingham in accordance with the Open Meeting Law. If any participant wishes to record this meeting, please notify the chair at the start of the meeting in accordance with M.G.L. c. 30A, § 20(f) so that the chair may inform all other participants of said recording.

The Chair noted that the meeting was being recorded by the Town. She then invited Emily Wentworth to review the questions posed by the Planning Board in its 2021 Report to Annual Town meeting. Ms. Wentworth reviewed a table that included the questions, draft recommendations, and related sources studied by the Committee. Questions discussed included the following:

- *Should detached ADUs be permitted in structures, which do not comply with existing zoning setbacks?*

The Committee discussed the potential more intensive use in a nonconforming detached accessory structure for living purposes as opposed to passive storage or some home occupations, particularly in terms of light or noise. Ms. Wentworth reviewed the recommended setback requirements in the state's model bylaw (minimum 5') and potential alternatives. Discussion followed about potential regulation of location of an ADU within a nonconforming accessory structure, but within the area of the structure that conforms to setbacks. The group generally agreed that any new construction should conform to current zoning and existing nonconforming structures should be reviewed on a case by case basis. Fire and building code was mentioned, and related limitations on openings, for structures with minimal setbacks.

- *Should detached ADUs be permitted within an entire detached structure or in only a portion of the detached structure?*

The Committee discussed potential pros and cons related to this question. Members agreed it would be appropriate to locate an ADU in the whole of or a portion of a detached structure, subject to certain design requirements, to meet the owner and/or occupant needs and encourage aging in place. This would allow, for instance, conversion of half of a two-story barn to an ADU with the other half retained for storage or construction of a smaller detached structure, similar to a tiny home, that would likely have little impact on abutters or neighborhood character.

- *Should detached ADUs be permitted in newly constructed detached structures and/or if a homeowner elects to turn its existing detached structure (e.g., garage) into an ADU, should that homeowner be permitted to then build another detached structure for a garage?*

Members expressed concern about the potential for overbuilding. The group discussed imposition of certain limitations, including lot coverage requirement, lot size minimum, or cap on the number of detached accessory structures allowed on a property with a detached ADU. Ms. Wentworth noted that those limitations were not presently codified in the bylaw within single-family residential districts, noting that it may be difficult to impose such restrictions only in connection with a detached ADU.

- *Are the existing requirements of Section V-K, and enforcement mechanisms with the Zoning Bylaw generally, sufficient to ensure substantial compliance by property owners of the “family member” restriction on the occupancy of detached ADUs?*

Ms. Wentworth reviewed the enforcement provisions in the Model Bylaw, which suggests that the burden of annual certifications falls on staff. She reminded the group that the Building Commissioner indicated that there have been no issues with enforcement thus far. Ms. Wentworth then suggested that the Committee defer discussion of this issue and particularly whether the family occupancy restriction should remain until Special Real Estate Counsel reviewed the legal issues related to “family”.

Attorney Susan Murphy shared the Attorney General Review of the 2018 ADU zoning article, which raises questions related to the state Anti-Discrimination Law (MGL c. 151B) and the federal Fair Housing Act (42 USC 3601). She confirmed that there has been no substantive changes in the law since the 2018 AG review. She said that zoning can be discriminatory on its face or by implication. She summarized case law, but noted that there is no single test to demonstrate disparate impact related to familial status.

Attorney Murphy reviewed the different definitions of family contained in Section VI of the By-Law and the ADU By-Law under Section V-K. Members noted that it was confusing to have two different definitions of family, but it could be moot if the restriction is lifted. She also added that if the occupancy limitation is maintained then the Committee might recommend adding foster children to the definition.

Attorney Murphy offered an example scenario. She said there is some risk that a member of a protected class could argue that the Town is violating the anti-discrimination laws because they

cannot occupy an empty ADU because they are unrelated the owner and Hingham has limited diversity. She said that based on her review of the law, the familial restriction was lawful at the present time based on the specified purposes in the bylaw.

Members discussed the AG review. The Chair said that it presented as if the Town was put on notice. She suggested that the Committee would be remiss to not discuss the limitation. She reminded others that certain constituencies, including the Housing Trust, weighed in on the matter, but that the Committee itself had not had enough discussion on the topic. Ms. DeNapoli raised a concern about enforcement. Attorney Murphy summarized zoning enforcement, including injunctive relief. She added that it ultimately works on an honor system because the Building Commissioner cannot enter a home without permission and even if he could, he would not be able to discern whether people are related or not.

Mr. Curran said that Department of Children and Family Services would probably disallow a foster child from residing along in a detached ADU. The Chair provided an example where allowing foster children may be helpful. Mr. Curran said that it may be helpful to include caregiver in the family definition.

Ms. Rouleau said that 13 of 15 Cape Cod Communities recently removed any familial restriction. She said Norwell did recently as well. She questioned what material difference there is between related or unrelated households residing on a property. She expressed concern that the restriction limits housing opportunities for aging in place, particularly for seniors that do not have family in the area or otherwise.

The Chair agreed that there may not be a material difference between family or nonfamily, adding that her neighbors may not want to live next door to some of her family.

Attorney Murphy added that the change may be mitigated with appropriate design or dimensional requirements.

Mr. Shriver said that he personally does not feel that the family restriction is necessary because society is changing.

Members then discussed the upcoming meeting schedule, opting to meet next on Tuesday, July 26 and tentatively on August 9. The Chair reminded all the deadline to make a report to the Planning Board is October 1. Members discussed future meeting topics, including limitation on short term rentals and minimum occupancy terms. Members requested more information on other communities' bylaws.

The meeting was adjourned at 8:45 PM.

Meeting Materials:

Table of Planning Board Questions from 2021 Report to Annual Town Meeting
Attorney General Review of ADU Regulations, dated October 29, 2018