



TOWN OF HINGHAM

Board of Appeals

MEMORANDUM

TO: Tom Mayo, Town Administrator
Michelle Monsegur, Assistant Town Administrator

FROM: Emily Wentworth, Senior Planner/Zoning Administrator

DATE: November 30, 2018

RE: Proposed Zoning Amendments

During its regular meeting on November 15, 2018, the Board of Appeals voted to submit three proposed zoning amendments to the Board of Selectmen for consideration at Annual Town Meeting 2019. A brief summary of each follows:

1. *Timeframe to Commence Permitted Use or Construction that becomes Nonconforming*

The Zoning Act (MGL c. 40A, s. 6) establishes certain exemptions or protections for uses or construction permitted prior to the first publication of a public hearing on a zoning amendment that would render the use or construction nonconforming. In August 2016, a new economic development law, [An Act Relative to Job Creation and Workforce Development](#), modified the period of time within which such permitted uses or structures must be commenced in order to retain their protected status. MGL c. 40A, s. 6, 2nd paragraph, as it was amended by 2016, 219, Sec. 29., now provides that:

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than 12 months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

Section I-C, 1. of the Hingham Zoning By-Law (“HZB”) presently refers to the previously effective six (6) month window of time to commence these nonconforming uses or construction, as opposed to the twelve (12) months now required by the Zoning Act, as amended. The Board initiated this proposed amendment so that the local regulation complies with current state law.

2. *Timeframe to Commence Use or Construction under a Special Permit*

An Act Relative to Job Creation and Workforce Development also modified the maximum lapse period that a municipality may impose in connection with a special permit. MGL c. 40A, s. 9, 14th paragraph, as it was amended by 2016, 219, Sec. 30., now provides that: “Zoning ordinances or

by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than 3 years...”

Section I-D, 2.b. of the HZB presently specifies the previously effective maximum lapse period of two (2) years. The Board initiated this proposed amendment so that it would have the option to provide applicants with a longer period of time to exercise special permits issued under its jurisdiction. Additional time could be appropriate for more complex projects requiring multiple permits, some of which are also effective for 3-years, from other regulatory bodies.

3. *Abandonment or Discontinuance of Nonconforming Single-Family and Two-Family Dwellings*

Section III-I, D. of the Zoning By-Law regulates abandonment or discontinuance of nonconformities. The Board initiated this proposed amendment in an effort to clarify exemptions that relate to abandoned or discontinued nonconforming Single-Family and Two-Family Dwellings. In terms of nonconforming uses, the amendment would apply to nonconforming Two-Family Dwellings the same discontinuance standards that presently apply to nonconforming Single-Family Dwellings. In terms of nonconforming dimensions, the proposed amendment would clearly state that the rights under Section III-I, 2., the so-called “Hatfield Amendment,” would not apply if an abandoned or discontinued structure is reoccupied for a conforming Single-Family or Two-Family use.

Full text of the proposed amendments is attached.

Proposed Zoning Amendment:
Timeframe to Commence Permitted Use or Construction that becomes Nonconforming

ZBA ARTICLE 1. Will the Town vote to amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, by replacing the reference to “six (6) months” where it appears in the last sentence in Section I-C, 1. with “twelve (12) months”, or act on anything related thereto?

Proposed Zoning Amendment:
Timeframe to Commence Use or Construction under a Special Permit

ARTICLE 2: Will the Town vote to amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, by replacing the reference to “two (2) year period” where it appears in the last sentence in Section I-D, 2.b. with “three (3) year period”, or act on anything related thereto?

Proposed Zoning Amendment:
Abandonment or Discontinuance of Nonconforming Single-Family and Two-Family Dwellings

ARTICLE 3. Will the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: Amend Section III-I, D.(i) by replacing the reference to “Single-Family or Two-Family residential use” where it appears in parentheses with “Single-Family Dwelling or Two-Family Dwelling”;

Item 2: Replace Section III-I, D.(ii) in its entirety as follows: “The nonconforming use of a building or structure as a Single-Family Dwelling or Two-Family Dwelling (and/or any Accessory Buildings related thereto) that has been discontinued for a period of more than four (4) years shall not be reestablished and any future use shall conform to this By-Law.”; and

Item 3: Replace Section III-I, D.(iii)a. in its entirety as follows: “This subsection (iii) shall not apply to and shall not prohibit the conforming use of a building or structure that would be a lawful nonconforming building or structure if it had not been deemed discontinued or abandoned hereunder as a Single-Family Dwelling (including Accessory Buildings) or a Two-Family Dwelling (including Accessory Buildings), provided, however, that the building or structure shall not be eligible for the exemption under Section III-I, 2., B. and any alteration, reconstruction, addition, extension, or structural change to the building or structure shall conform to the applicable setback requirements under Section IV-A.”

or act on anything related thereto?