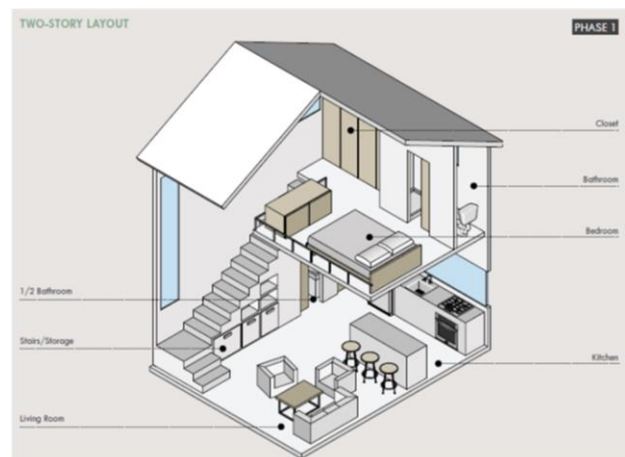
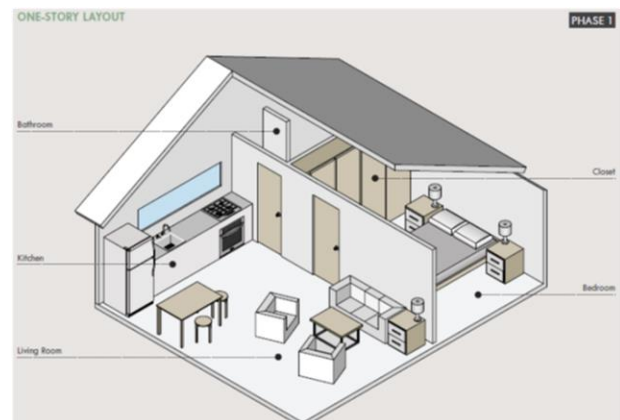
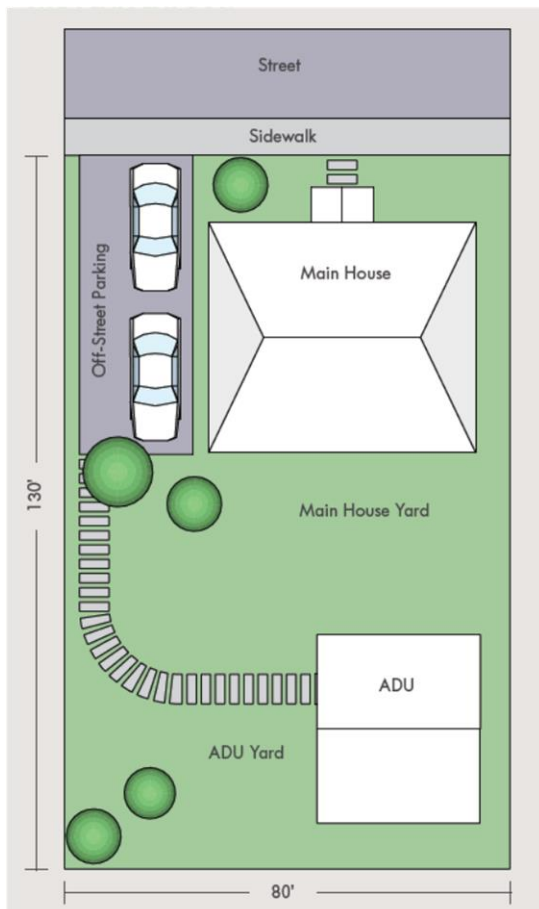


Accessory Dwelling Unit Study Committee Report

September 2022



Executive Summary

Annual Town Meeting 2021 created the Accessory Dwelling Unit (ADU) Study Committee in order to assess the merits of amending the provisions of the Zoning By-Law to allow detached accessory dwelling units and/or to amend any other provision of the Zoning By-Law reasonably related to the creation of accessory dwelling units (either attached or detached).

The seven members designated to undertake the endeavor consist of representatives from Town agencies or appointed citizens. The Study Committee was joined in its efforts by interested residents, as well as representatives of other Town boards and committees, community organizations, utility providers, and municipal departments. The Study Committee conducted its work during more than a dozen public meetings held between November 2021 and September 2022. This report is the result of robust, collegial discussion held during those meetings after extensive review of relevant planning studies, local experience with the existing ADU regulations, and ADU regulations effective in other communities. The Study Committee offers a summary of the concepts considered to provide some context for its recommended changes to the Hingham Zoning By-Law. The Study Committee unanimously supported the concept of allowing ADUs within detached accessory structures, subject to existing and proposed eligibility, dimensional, and design parameters; however, there was not universal support among members for eliminating the existing familial occupancy restriction.

The Study Committee submits this report to the Planning Board as required in the 2021 Town Meeting Warrant. This report summarizes the discussions at the meetings, highlights the issues which arose, and details the conclusions made by the Study Committee.

Members: Jennifer Gay Smith, Chair, Planning Board Designee
 Gerry Allen, Moderator Appointment
 Matthew Curran, Select Board Appointment
 Diane DeNapoli, Commission on Disabilities Designee
 Robyn Maguire, Zoning Board of Appeals Designee
 Beth Rouleau, Council on Aging Designee
 Tracy Shriver, Historic Districts Commission Designee

Staff: Emily Wentworth, Community Planning Director
 Michael Silveira, Senior Planner

Acknowledgements

Many contributed to this report by sharing experiences, information, time, and effort. The Study Committee is grateful for participation throughout the process by representatives of the following organizations, agencies, and other stakeholders:

Municipal Departments

- Building Department
- Department of Public Works/Sewer Department
- Fire Department
- GIS Manager
- Health Department
- Hingham Municipal Light Plant
- Land Use and Development Department
- Special Real Estate Counsel
- Weir River Water System

Local Boards, Committees, Community Groups, and Planning Organizations

- Commission on Disabilities
- Hingham Affordable Housing Trust
- Hingham Unity Council
- Historic Districts Commission
- Metropolitan Area Planning Council

Cover Image Credit: Metropolitan Area Planning Commission, 2021 South Shore Living Little to Middle Report

Background

Hingham adopted regulations allowing Accessory Dwelling Units (ADUs) in 2018 after many years of discussion. The existing regulations are the outgrowth of an unsuccessful attempt to advance ADU regulations in 2014-2015 in which the initial draft was seen as overly broad. The Town took a more conservative approach in 2018. As a result, [Section V-K](#) of the Hingham Zoning By-Law is presently limited in scope, particularly with respect to the following:

Permitting Process	ADUs may be allowed by special permit, not by-right
Occupancy Limitation	ADUs may only be occupied by family members
Size Limitations	ADUs may only be the lesser of 750 SF or 30% of the principal gross floor area
Location Limitation	ADUs may only be located within or attached to a principal, single-family dwelling and not within a detached structure accessory to the single-family

The warrant for the 2021 Annual Town Meeting included a zoning article initiated by Citizen's Petition to amend Section V-K in order to update certain limitations, including the latter two highlighted above. [Article 27](#) specifically asked the Town to consider allowing ADUs within existing, detached structures, in addition to increasing the size limit ratio between the ADU and principal structure from 30% to 35%, along with other related changes. After substantial public discussion, both the Planning Board and Advisory Committee recommended further study and discussion of the proposed changes before adoption. Based on the recommendation, Town meeting established the ADU Study Committee for the following purpose and with the following charge:

...for the purpose of reviewing the merits of this Warrant Article and/or the merits of amending the provisions of the Hingham Zoning Bylaw, Section V-K, or other applicable provisions of the Zoning By-law, to allow detached accessory dwelling units and/or to amend any other provisions of the Zoning By-law reasonably related to the creation of accessory dwelling units (either attached or detached), and to submit a written report to the Planning Board setting forth whether the Committee recommends in favor of any such amendment(s) and the reasons for such recommendations. If any amendments are recommended, the Committee shall include in its report its proposed changes.

The full text of the Planning Board's Report to Town Meeting on Article 27 of the 2021 Warrant is attached as Appendix A.

Study Committee Process

As noted in the Executive Summary, the Study Committee held thirteen public meetings to assess the merits of detached ADU regulations and consider potential changes to the current

regulations based on either experience since adoption or study of other permitting approaches. The Committee established a work plan during its initial meeting that involved:

- Review of the existing Zoning By-Law, including the Attorney General’s approval letter;
- Assess all ADUs approved since 2018;
- Collect information from Town departments involved in permitting those ADUs through a series of targeted meetings to discuss design standards and enforcement concerns related to either attached or detached ADUs;
- Review of the 2021 Housing Plan and 2021 Master Plan with expressed goals or objectives related to ADUs;
- Consider other permitting approaches such as those from the state’s model bylaw;
- Compare Hingham’s ADU regulations to those effective in the Town’s benchmark communities; and
- Gain an understanding of potential impacts of recent Housing Choice legislation on voting thresholds for adoption of ADUs regulations.

The Study Committee largely completed its data collection and targeted meetings by the end of June. Members then began an in depth dialog to collectively synthesize what they had learned and determine how best to respond to the questions posed by the Planning Board in its 2021 Report to Town Meeting. The discussion was iterative in nature as the potential impact of any change to the By-Law had to be viewed through multiple lenses. Ultimately, the Committee reached consensus on nearly all of the concepts summarized in the remainder of this report.

All documents reviewed by the Committee, including written public comments received, are available online and included in the Resources section of this report.

Experience To-Date

The Zoning Board of Appeals or its Zoning Administrator have issued sixteen (16) special permits for ADUs since 2018. Since the existing cap of 2.5% presently equates to 156 units, capacity remains for additional attached ADUs or potential future detached ADUs.

The majority of permitted ADUs were proposed within existing housing stock, with just one approved within new construction. The average lot size for properties with ADUs is approximately 20,000 SF, but areas range from 9,500 SF (sewer) to 85,000 SF (septic). Most of the ADUs are controlled by the 750 SF gross floor area limitation, as opposed to the 30% ratio. The DPW Director and Executive Health Officer explained that existing dwellings, particularly those in the Weir River Sewer District or on undersized lots with onsite wastewater disposal systems, can be modified so that additional wastewater capacity is not required to serve the property.

The Zoning Board designee reported little abutter participation during public hearings for ADU special permit applications. Applicants tend to present complete and thorough plans and

materials. The Building Commissioner/Zoning Enforcement Officer confirmed that permit holders submit required annual certifications, so enforcement has not created a burden for the building department.

Past Planning Efforts

The Planning Board Report to the 2018 Annual Town Meeting notes that discussion of the need for ADUs has gone on for decades. The 2001 Master Plan identified a need for more diverse housing options in town, as well as a need to provide housing of all types to enable citizens of all ages to stay in Hingham. The Plan specifically identified ADUs as a creative use or reuse of older homes in town.

In March 2017, the Planning Board adopted updated Master Plan Goals & Objectives, including the following: “Encourage and maintain a mix of housing types in various locations throughout the town by supporting development that provides for households at all income levels.” and “Enact an accessory unit By-Law tailored to Hingham’s specific needs that will allow secondary units while respecting neighborhood character.”

More recently, the Hingham Housing Plan, finalized in June 2021, identified the Affordable Housing Trust and the Planning Board as the responsible parties for this short-term priority strategy: “Better promote and advocate for expanded ADUs.” The Plan includes a detailed narrative of the benefits of ADUs and offers examples from other communities.

The Master Plan adopted by the Planning Board in August 2021, includes a policy recommendation to “explore the possibility of allowing detached accessory dwelling units in some or all of the areas where accessory dwelling units are now allowed for family members, but not for rental.” The recommendation is a subset of the broader goal to “provide a variety of housing to encourage population diversity and aging in the community.”

Other ADU Regulations

Following state and regional trends, many municipalities have expanded the types of accessory housing allowed by zoning in response to housing shortages and changing demographics (smaller household sizes, aging population).

A full review of ADU regulations in the Town’s benchmark communities reveals that Hingham has a more conservative or restrictive approach to ADUs than many. While only half of those that allow ADUs permit detached ADUs (6/12), the majority or three-quarters (9/12) do not restrict occupancy of the ADU. With the exception of Rockland, all communities permit larger ADUs either with respect to floor area or in relation to the principal dwelling. Please see Appendix B for the full comparison.

Primary Discussion Topics

Based on the information gathered, the Study Committee discussion focused on the following aspects of detached ADUs and existing regulations for attached ADUs in the Zoning By-Law:

Purposes

Section V-K of the By-Law includes the following purposes:

- Provide accessory dwelling units without adding to the number of buildings in the Town or substantially altering the appearance of the dwelling and for the purpose of enabling owners of single-family dwellings to share space and the burdens of homeownership with family members (as defined in this Section V-K) while also protecting the stability, property values and residential character of the surrounding neighborhood.
- Provide housing units for family members with diverse housing needs including, without limitation, family members with mental and physical disabilities.
- Enable the Town to monitor accessory dwelling unit construction for code compliance.

The Committee reviewed the purposes of ADU bylaws in the Town's applicable benchmark communities. Since many do not impose occupancy restrictions, their purposes tend to be broader.

The 2021 Hingham Housing Plan outlined other benefits of more expansive ADU regulations upon which the Board may model updated purposes if the familial restriction is eliminated. These include the following objectives:

- Create moderately-priced housing for those who might otherwise find it difficult to find housing.
- Offer appropriately sized units for growing numbers of smaller households, young adults and senior citizens in particular.
- Provide a fairly inexpensive means of increasing the supply of year-round rental units at lower cost than new construction and without significant impact on the surrounding neighborhood.
- Create housing units that do not require additional Town services, such as new streets or utilities, and involve little or no loss of open space.
- Provide companionship, security and services for the homeowner or tenant.
- Generate increased tax revenue in a locality because accessory units typically add value to existing homes.
- Offer a way of preserving historic properties given the rental stream available to help maintain the property.

The Committee additionally notes that the current By-Law clearly is intended to create housing opportunities, not guest accommodations. Members reviewed the definition of guesthouse effective in Cohasset, which reads: "Dwelling used only intermittently by personal guests and

family without remuneration.” The Committee felt it important to propose an occupancy term in the By-Law, so ADUs are not confused as guesthouses or short-term rentals.

Permitting Process

The By-Law presently allows attached ADUs upon issuance of a special permit by the Zoning Board of Appeals. While some communities allow ADUs, attached or detached, by-right and there is pending legislation that could require by-right permitting for ADUs serving certain populations, the Committee recommends retaining the special permit requirement for attached ADUs and extending it to detached. The mechanism ensures that abutters are informed of an application and provides an opportunity for interested parties to participate in the public hearing process.

Occupancy Restriction

The Committee discussed the existing family occupancy limitation under Section V-K at length. As noted under the summary of the *Other ADU Regulations* topic, most benchmark communities do not restrict occupancy to family members. Two of the three that do (Needham and Rockland) have more permissive definitions of family than that contained in Section V-K of the Hingham Zoning By-Law.

Members heard conflicting input on this restriction. The Hingham Affordable Housing Trust and the Hingham Unity Council advocated for more expansive ADU zoning, including elimination of the family restriction. The Commission on Disabilities on the other hand raised concerns about affordability, particularly for disabled residents, if the restriction is lifted.

The Study Committee discussed the divergence of opinions on this issue at length. Ultimately, members concluded that the existing and proposed restrictions on ADUs provide strong protections against potential negative impacts on neighbors - the most important being the owner occupancy requirement. The Study Committee was unable to identify a legitimate zoning purpose for restricting occupancy to family members. However, members also expressed practical concern that it may not be politically realistic to put forward a zoning article that both allows detached ADUs and eliminates the familial restriction at the same time. The Committee acknowledged that Hingham tends to be more conservative in its approach to new regulations, adopting changes on a more incremental basis. The Committee hopes that addressing both issues at the same time does not result in negative action on both.

Ultimately, the Study Committee opted to recommend that the Board consider eliminating the familial restriction¹ from the ADU By-Law, with appropriate safeguards to ensure that ADUs are not used as short-term rentals or guesthouse uses, neither of which are presently allowed in Hingham. While practically many homeowners interested in creating an ADU will initially do so

¹ Should the Planning Board opt to retain the familial restriction, the Committee recommends reconciling the definitions of Family under Section V-K and Section VI as suggested by the Attorney General’s 2018 review.

for family members, removing the restriction allows the ADU to be reoccupied after family circumstances change. It also provides homeowners with more flexibility to share in housing costs and responsibilities and promotes aging in place. The proposed additional enforcement mechanism consists of an occupancy term of 60 days² for the unit not occupied by the owner. Based on a recent example from Norwell, the owner would be required to record a covenant, enforceable by the Town, related to the occupancy term. It is worth noting that the Attorney General has not yet approved Norwell's Bylaw and that local town counsel will need to review the recommended restriction and enforcement mechanism.

Eligibility, and Dimensional and Design Requirements

ADU Cap - The Committee recommends retaining the existing ADU Cap of 2.5% as a means of controlling the overall number of ADUs permitted in the Town, thus minimizing potential impact on overall density or character.

Lot Size - The Study Committee recommends maintaining the 5,000 SF minimum lot area requirement for attached ADUs and adopting a higher standard of 10,000 SF for detached ADUs to an existing single-family dwelling. The Study Committee reviewed a map of the town to visualize what neighborhoods may be impacted by the higher standard. Most residential properties exceed both minimums and local wastewater restrictions will practically limit the creation of additional design flow.

Maximum Area – The Study Committee recommends a modest increase of the permissible floor area for an ADU from the lesser of 750 SF/30% to the lesser of 875 SF/35%.

Separation – The Study Committee recommends adoption of a separation requirement between a principal single-family dwelling and detached ADU to maintain light and air and secure the dwellings from fire and other disaster. Most other communities require a minimum of 6'-10'. Members suggest requiring the higher end of this range, or 10'.

Setbacks/Location – The Study Committee recommends requiring that a detached ADU comply with all applicable setbacks; however, the Study Committee also suggests adoption of a waiver provision for preexisting nonconforming detached structures, provided the ADU is located no closer than 10' to a property line. Additionally, the Study Committee recommends a requirement that a detached ADU be located to the side (and minimally set back 10' from the front façade of the principal dwelling) or rear of the principal structure and prohibited from a front yard.

Waiver – In order to provide flexibility to homeowners with existing detached structures, the Study Committee recommends inclusion of a waiver provision so that the Zoning Board of Appeals may under particular circumstances and for appropriate purposes grant a waiver of certain dimensional and design standards through the special permit. Similar waiver provisions existing throughout the Zoning By-Law including under Section I-C. Enforcement (waiver of

² The Board should discuss with Counsel whether this limitation should apply to all residential uses and not just accessory dwelling units.

occupancy limits for multifamily development prior to completion of all site work improvements), Section I-I. (waiver of Site Plan Review submittal requirements or design and performance standards), Section III-C. (waiver of use restrictions within floodplain), Section IV-D. (waiver of open space buffer for Flexible Residential Developments), and Section V-A. (waiver of parking standards (number or dimensions)).

Article 27 directed the Study Committee to include in its report its proposed changes; these are presented in Appendix C as redlines to Section V-K of the Zoning By-Law.

Responses to Planning Board Questions

The questions posed by the Board also helped guide the Study Committee's discussion. In general, members agreed that any allowance for detached ADUs should include clear dimensional and design requirements; however, the Study Committee also discussed the possibility of allowing greater flexibility in limited circumstances for detached ADUs proposed to be located in existing structures that are nonconforming with respect to setbacks similar to the allowance presently included in the By-Law for attached ADUs. Please see the summary below of a proposed waiver provision.

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

The Study Committee recommends adoption of a requirement that any detached ADU comply with applicable zoning setbacks unless waived by the Zoning Board of Appeals for a preexisting nonconforming detached structure.

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

The Study Committee recommends that applicants are afforded the flexibility 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. This would allow, for instance, conversion of half of a two-story barn to an ADU with the other half retained for storage and construction of a smaller detached structure, similar to a tiny home, that would likely have little impact on abutters or neighborhood character.

3. *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?*

The Study Committee shares the Planning Board's concern about the potential for overbuilding. After substantial discussion of imposing a potential lot coverage requirement or restriction on the number of detached accessory structures allowed on a

property with a detached ADU, members opted not to control this accessory use in a manner not otherwise regulated in residential districts for the principal use or other accessory uses. Instead, the Committee recommends that the Planning Board consider adoption of more universal zoning to discourage overbuilding in the future.

4. *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?*

Based on the Town’s experience to date, the annual recertification process is enforced and deemed sufficient by the Building Commissioner to ensure compliance with the owner occupancy requirement. There is no certification process in the current By-Law to verify that the unit not occupied by the owner is occupied by family members after the application phase.

Next Steps

Based on the Article 27 of the 2021 Warrant, the Planning Board will need to “hold at least one public meeting in advance of the December 1 deadline for submission of zoning amendments as set forth in Article 2, Section 7 of the Hingham General By-laws, to determine if the Planning Board will elect to submit, or to support the submission of, one or more zoning amendments based on the report of the Committee.”

As an aside, adoption by Town Meeting of the proposed amendments to the existing ADU regulations for attached ADUs may require a 2/3 supermajority vote since these are permitted by special permit, not by right. Conversely, proposed changes to the Zoning By-Law related to detached ADUs may require a ½ simple majority vote. Relevant excerpts from MGL c. 40A as amended by the Housing Choice legislation follows (emphasis added):

MGL c. 40A, s. 5:

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily housing or mixed-use development in an eligible location; (b)

accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or (c) open-space residential development;

(2) an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9; (c) accessory dwelling units in a detached structure on the same lot; or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9;

MGL c. 40A, s. 1A:

"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 floor area than 1/2 the 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, owner-occupancy requirements and restrictions or prohibitions on short-term rental of accessory dwelling units.

The state offers the following guidance on voting thresholds: <https://www.mass.gov/info-details/voting-threshold-guidance>.

The Committee looks forward to presenting its work and discussing the potential zoning amendments related to ADUs with the Board.

Resources

Regulations

[Existing Accessory Dwelling Unit Regulations](#) (Section V-K of the Zoning By-Law)
[Attorney General Review of ADU Regulations](#), dated October 29, 2018
[Pending Legislation related to ADUs \(No. 1370\)](#)
[Massachusetts Smart Growth Model ADU Bylaw](#)
[Draft By-Law Amendment for Discussion Purposes Only](#), dated July 26, 2022
[Chart of Benchmark Community ADU Regulations](#)
[Benchmark Community ADU Zoning Regulations](#)

Presentations

[March 1, 2022 – Utility Considerations](#)
[May 17, 2022 – Demographic and Housing Considerations](#)
[August 23, 2022 – ADU Design and Dimensions](#)

Related Plans and Reports

[Article 27 Excerpt from the 2021 ATM Warrant with Planning Board Report](#)
[ADU Strategies and Policies from the Housing Plan and Master Plan](#)
[2021 Hingham Housing Plan](#)
[2021 Hingham Master Plan](#)
[2022 South Shore Living Little Report](#)
[2018 Pioneer Institute Report on the State of Zoning for Accessory Dwelling Units](#)
[2019 AARP Guide on The ABCs of ADUs](#)
[Hingham Single-Family Lot Size Map](#)
[Needham Public Health ADU Report](#), dated October 11, 2017

Cases Related to Definition of Family

[Moore v. City of East Cleveland Ohio](#)
[Rosenberg v. City of Boston](#)
[Village of Belle Terre v. Boraas](#)

Public Comment

[Hingham Unity Council Recommendations](#), dated June 7, 2022
[Hingham Affordable Housing Trust Comments](#), presented June 7, 2022
[Letter from Commission on Disabilities](#), dated August 15, 2022
[Letter from R. Estes](#), dated August 22, 2022
[Letter from Commission on Disabilities](#), dated September 15, 2022

Appendix A

Report of the Planning Board

ARTICLE 28: Citizen Petition: Amend Zoning By-law: Accessory Dwelling Units

A petition warrant article was submitted on behalf of the requisite number of residents to amend the Hingham Zoning Bylaw, Section V-K (Accessory Dwelling units) to allow for accessory dwelling units (ADUs) in detached structures. In summary, the petition article requests the following changes:

- Allow detached ADUs in existing detached structures.
- Increases the minimum s.f. of the ADU from 30% to 35% of the single-family dwelling.
- Would allow entrances to the detached ADU to be on the front of the structure (as opposed to side or rear as required for attached ADUs).
- Would allow separate metering for detached ADUs (separate metering is currently prohibited).

While on the surface these changes do not appear to be extensive, based on five public hearings to discuss the proposed changes, the Planning Board identified a number of potential consequences (whether intended or unintended) which could have significant impacts on residential neighborhoods throughout the Town of Hingham.

In addition, while the petition is signed by the requisite number of residents, the primary proponent of the warrant article is the owner of a home with a detached structure who has been transparent throughout the process that the proposed changes summarized above are tailored to fit the exact conditions of an existing detached structure on the proponent's own lot. The Board raised a serious concern that a zoning change that will have Town-wide impact should not be crafted based solely on facts that are intended to benefit a particular parcel without mitigation of possible impacts.

The consensus of the Planning Board is that allowing detached ADUs in Hingham has merits worth considering, but more discussion and input is required. It is noted that, prior to the adoption of the existing ADU bylaw, Section V-K, a study committee formed by the Board of Selectmen and Planning Board that met from 2015-2016 looked at both attached and detached ADUs. No by-law change came directly out of that committee, but subsequently the Planning Board undertook to review the work of the committee and elected for multiple reasons to propose only attached ADUs. Those reasons included a desire to approach this change in the By-law in small, incremental steps. The consensus of the prior committee and the Planning Board is that the impacts of detached ADUs are significantly greater on residential neighborhoods than attached ADUs and need to be approached more cautiously.

Less than three years have passed since Section V-K came into effect (with the covid-19 pandemic affecting over a year of that period). During that period, thirteen attached ADUs have been permitted. Therefore, a significant amount of time and experience with the existing ADU by-law has yet to occur.

Issues for further review that were raised by the Planning Board members throughout their discussions at the public hearings on the petition article, and which raise questions not posed by ADUs currently allowed within single-family dwellings, include the following:

- Should detached ADUs be permitted in structures which do not comply with existing zoning setbacks? Buildings within zoning setbacks are located very close to abutting neighbors. Given that activities, lights, and sounds within a dwelling are generally more intensive than those in structures used for accessory purposes (e.g., a garage, home office), there may be greater impacts on abutters from a detached ADU than an attached ADU.
- Should detached ADUs be permitted within an entire detached structure or in only a portion of the detached structure? For example, the most common detached ADU found in most communities is an ADU above an existing garage. Other examples might be conversion of a pool house (or a portion thereof) to an ADU. In addition, many older properties in Hingham have barns that may be converted. Allowing a detached ADU to occupy an entire detached structure (subject to the square footage limitation) would create an entirely separate second home on the property. The pros and cons of such a change requires further review.
- 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? The potential for the construction of multiple detached accessory structures on the property may cause, particularly on smaller lots, overbuilding. The potential impact across residential zoning districts should be explored.
- 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? The Board members expressed concern that enforcement will fall to abutters who, if adversely affected, will have to report on a neighbor, thereby creating an unfair burden on abutters.
- The Board further notes that there has not been significant public interest in this warrant article. At each of its hearings, there were present, on average, only three to five residents with only three providing public comment. As one of the primary purposes of the adoption of the original ADU bylaw is to allow for families to provide housing for family members, particularly those with special housing needs, the Planning Board feels strongly that a broader discussion that provides for direct representation by seniors, the special needs community, affordable housing proponents and residents at large is needed.

Based on the foregoing, the Planning Board recommended against favorable action on the petition article, and in lieu thereof, recommends to Town Meeting the formation of a study committee as outlined below. The Advisory Committee has also unanimously recommended adoption of a motion forming a study committee.

The full text of the Recommended Motion is found in the Warrant. The structure and role of the proposed committee is outlined as follows:

Name: ADU Study Committee

Purpose: Review the merits of amending the provisions of the Zoning By-law to allow detached accessory dwelling units and/or to amend any other provisions of the Zoning Bylaw reasonably related to the creation of accessory dwelling units (either attached or detached)

Goal: To submit a written report to the Planning Board setting forth whether the committee recommends in favor of any such amendment(s) and the reasons for such recommendations. If any amendments are recommended, the committee shall include in its report its proposed changes.

Members: Seven (7) members as follows:

- one member of the Planning Board (or its designee) who shall be the chair of the committee;
- one member of the Council on Aging (or its designee);
- one member of the Commission on Disabilities (or its designee);
- one member of the Zoning Board of Appeals (or its designee);
- one member of the Historic Districts Commission (or its designee);
- one resident of the Town appointed by the Board of Selectmen (who shall not be members of the foregoing boards); and
- one resident of the Town appointed by the Moderator (who shall not be members of the foregoing boards).

Timing: The committee shall endeavor to issue its report to the Planning Board within one year of its formation, but in no event later than October 1, 2022. Upon receipt of such report, the Planning Board shall hold at least one public meeting in advance of the December 1 deadline for submission of zoning amendments as set forth in Article 2, Section 7 of the Hingham General By-laws, to determine if the Planning Board will elect to submit, or to support the submission of, one or more zoning amendments based on the report of the committee.

HINGHAM PLANNING BOARD

Kevin Ellis, Chair

Gary Tondorf-Dick, Clerk

Gordon Carr

Rita DaSilva

Judith Sneath

Appendix B

Comparision of Accessory Dwelling Unit (ADU) Regulations in Benchmark Communities								
Community	Permit Process	Location	Size Limitiations	Min. SF Size	Min. Lot Size	Occupancy Limitations	Max #	Owner Occupied
Concord	By-right/SP for waivers	Attached or Detached	1000 SF	N/A	Min area for district; unless waived	Unrestricted	1	Yes
Lexington	By-right/SP	Attached or Detached	40% or 1000 SF detached	N/A	N/A	Unrestricted	1	Yes
Norwell	By-right	Attached or Detached	900 SF or 50%	N/A	N/A	Unrestricted	1	Yes
Scituate	By-right/SP by District	Attached or Detached	750 SF or 40% max	N/A	Must comply w/ all zoning regs	Unrestricted	1(SF); 3(Bus)	Yes
Weston	SP	Attached or Detached	600 SF min, 25% or 2-BR max	3,000 SF	Must comply w/ all zoning regs	Unrestricted	1	Yes
Westwood	SP	Attached or Detached	500-900 SF	N/A	N/A	Unrestricted	1	Yes
Canton	SP	Attached	2-BR, 30% max	N/A	10,000' or minimum required for district whichever is greater	Unrestricted	1	Yes
Cohasset	SP	Attached	900 SF or 25%	1,200'	Min for district unless nonconforming	Unrestricted	1	Yes
Dedham	SP	Attached	350 SF min, 1000 SF or 33% max	N/A	10% greater than required for district	Unrestricted	1	Yes
Duxbury*	SP	Attached	850 SF	N/A	20,000 SF min.	Unrestricted	N/A	Yes
Hingham	SP	Attached	750 SF or 30% max	N/A	5,000 SF min.	Family	1	Yes
Milton	SP	Attached	800 SF or 33% max	N/A	"Adequate"	Family	1	Yes
Needham	SP	Attached	850 SF	N/A	N/A	Family and Caregivers	1	Yes
Rockland	SP/By-right	Attached	400 SF-650 SF	N/A	N/A	Family or unrelated if sharing household	1	Yes
Andover	No ADU Regulations, but Two-family and Multifamily allowed							
Braintree	No ADU Regulations, but Two-families allowed							
Hull	No ADU Regulations, but Lodging and Multi-family allowed							
Marblehead	No ADU Regulations; Boarding, Two-family, and Multifamily allowed							
Wellesley	No ADU Regulations, but Two-family, Boarding, Townhouse, and Multi-family allowed							
Weymouth	No ADU Regulations; Renting Rooms, Two-family and Multi-family allowed							

Appendix C

Draft Amendment to the Zoning By-Law

V-K Accessory Dwelling Units

1. Purpose

Consistent with the Master Plan, ~~Goals~~ adopted ~~March 20~~August 23, 2017~~2021~~, the purpose of permitting ~~accessory~~ dwelling units ~~in accessory to~~ single-family dwellings is to:

a. Provide a variety of housing to encourage population diversity and aging in the community.

a.b. Provide accessory dwelling units without significantly adding to the number of buildings in the Town or substantially altering the appearance of the ~~dwelling residential property~~ and for the purpose of enabling owners of single-family dwellings to share space and the burdens of homeownership ~~with family members (as defined in this Section V-K)~~ while also protecting the stability, property values and residential character of the surrounding neighborhood.

b.c. Provide housing units for ~~family members~~ households with diverse housing needs including, without limitation, family members with mental and physical disabilities.

ed. Enable the Town to monitor accessory dwelling unit construction for code compliance.

2. Definitions

a. An “accessory dwelling unit” is a second self-contained dwelling unit located either within a single-family dwelling or a detached structure accessory thereto, which second dwelling unit is subordinate in size to the principal dwelling and otherwise complies with the provisions of this Section V-K.

~~b. For the purposes of this Section V-K, a “family member” shall be a person related to the owner by blood, adoption or marriage, and may also include domestic help and caregivers.~~

e.b. A “principal dwelling” for the purposes of this Section V-K is a single-family dwelling exclusive of the area that constitutes the accessory dwelling unit.

d.c. A single-family dwelling with an accessory dwelling unit shall not be deemed to be a two-family dwelling.

3. Eligibility Requirements

The Board of Appeals may only issue a Special Permit A1 for an accessory dwelling unit that meets the following minimum eligibility requirements:

- a. As of the date that the application for a special permit is filed with the Board of Appeals, the total number of accessory dwelling units in the Town shall not exceed two and one-half percent (2.5%) of the total single-family dwelling units in the Town (the "ADU Cap"). The ADU Cap shall be determined by a fraction represented as follows: the numerator shall be the total number of accessory dwelling units allowed by special permit pursuant to this Section V-K plus the number of accessory dwelling unit permit applications pending approval before the Board of Appeals and the denominator shall be the total number of single-family dwelling units existing in the Town as classified in the Hingham assessors' records.
- b. The applicant shall, at the time application is made for the special permit, be the owner of the lot and single-family dwelling thereon ~~in which~~where the accessory dwelling unit is proposed and must certify in such application that ~~(i) the owner currently occupies the single-family dwelling or will occupy the principal dwelling or accessory dwelling unit as his or her primary residence immediately upon issuance of the special permit and (ii) that the other unit shall be occupied by a family member.~~
- c. The area of the lot on which the existing single-family dwelling is located shall not be less than five thousand (5,000) square feet for an accessory dwelling unit within the principal structure or ten thousand (10,000) square feet for an accessory dwelling unit in a detached accessory structure. ~~or~~ In the case of new construction, the area of the lot shall comply with the applicable minimum lot size for the single-family zoning district in which the single-family dwelling is proposed.
- d. The application must be accompanied by written confirmation from either (i) the Board of Health that the requirements of the Massachusetts Title 5 septic system regulations and the Hingham Board of Health Supplemental Rules and Regulations for septic systems have been or can be met or (ii) the Sewer Department that there exists available capacity in the applicable sewer district, in either case, to support the total number of bedrooms proposed for the lot inclusive of the accessory dwelling unit.
- e. Only one accessory dwelling unit shall be permitted ~~within a single family dwelling and~~ per lot so that the total number of dwelling units per lot shall not exceed two.
- f. In Residence District D and in Business Districts A and B accessory dwelling units are only permitted in connection with preexisting nonconforming single-family dwellings.

4. Dimensional and Design Requirements Applicable to all Accessory Dwelling Units

The Board of Appeals may only issue a Special Permit A1 for an accessory dwelling unit that meets the following dimensional and design requirements:

- a. The architectural character of a ~~detached~~ single-family dwelling use shall be maintained.
- b. All stairways accessing an accessory dwelling unit above the ground floor of a single-family dwelling or detached accessory structure shall be enclosed within the exterior walls of the ~~single family dwelling building~~.
- c. The maximum area of an accessory dwelling unit shall be the lesser of ~~875750~~ square feet or ~~350~~% of the gross floor area of the principal dwelling. For this calculation, the gross floor area shall be as defined in Section VI of this By-Law.
- d. An accessory dwelling unit shall not be created by any extension of a non-conforming building dimension, including the front, side or rear yard setback.
- e. Any new entrance for the accessory dwelling unit or principal dwelling shall be located to the side or rear of the single-family dwelling or detached accessory structure.
- f. Water and sewer utilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling; provided, however, that the Board of Appeals may waive this requirement for an accessory dwelling unit within a lawfully existing structure which already maintains separately metered utilities, if the request is accompanied by the written approval of the appropriate utility, upon a finding that a waiver advances the purposes of this bylaw.
- g. Additional or modified landscaping, fences or other buffers may be required to protect abutting properties from potential negative visual or auditory impacts of the accessory dwelling unit.
- h. The parking requirement for an accessory dwelling unit is one space per bedroom in addition to the minimum required parking spaces for a single-family dwelling.
- i. An accessory dwelling unit may not have more than two (2) bedrooms.

5. Additional Dimensional and Design Requirements Applicable to Accessory Dwelling Units in Detached Accessory Structures

The Board of Appeals may only issue a Special Permit A1 for a detached accessory dwelling unit that meets the following dimensional and design requirements:

- a. The detached accessory dwelling unit shall comply with all building dimensions, including the front, side or rear yard setback and height limitations. Notwithstanding the foregoing, the Permit Granting Authority may waive the

preceding requirements for an accessory dwelling unit within a lawfully existing nonconforming detached accessory structure to no less than 10' from a side or rear property line upon a finding that there will no potential negative visual or auditory impacts associated with the accessory dwelling unit that cannot be mitigated.

- b. The detached accessory dwelling unit shall be located a minimum of 10' from the principal dwelling and to the rear of the principal single-family dwelling or to the side of the single-family dwelling at a minimum position 10' further back from the front plane of the single-family dwelling.

5-6. General Conditions

Any special permit issued pursuant to this Section V-K shall be subject to, and shall incorporate the following conditions:

- a. The owner of the single-family dwelling shall occupy either the principal dwelling or the accessory dwelling unit as the owner's primary residence. Temporary absences of the owner for a period of not more than ~~nine-six~~ months in the aggregate in any twelve month period and active military service of the owner for any length of time shall not be deemed a violation of this requirement ~~provided that the dwelling units may only be occupied by family members of the owner during the owner's absence.~~
- b. The owner shall recertify annually, by submission of a notarized letter to the Building Commissioner, that the owner will continue to occupy either the primary dwelling or the accessory dwelling unit as the owner's primary residence, except for a bona fide temporary absence as provided above in subsection ~~56~~.a.
- c. Upon the sale or other conveyance or transfer of a single-family dwelling which has been issued a permit for an accessory dwelling unit, if the new owner wishes to maintain the special permit for the accessory dwelling unit use, such new owner must, within thirty (30) days of such transfer, submit a notarized letter to the Building Commissioner certifying that the new owner will occupy one of the dwelling units as the new owner's primary residence and comply with the other conditions of the accessory dwelling unit use.
- d. Neither the principal dwelling nor the accessory dwelling unit may be sold or otherwise conveyed or transferred separately from the other.

- d. The accessory dwelling unit or the principal dwelling, whichever is not owner-occupied, shall have a minimum occupancy or rental term of 60 days and a restrictive covenant shall be recorded against the property to that effect before any occupancy permit issues for the ADU and the covenant shall run to the Town and be enforceable by the Town through injunctive relief, with the property owner required to pay the Town's reasonable legal fees and costs for successful enforcement of any violation of the restrictive covenant.