

ARTICLE 13

THIRTEENTH ARTICLE

Submitted by: Roger Blood on behalf of the Housing Advisory Board

To see if the Town will amend Sections 4.04 and 4.05 of the Brookline Zoning By-Law (Accessory Uses/Accessory Dwelling Units) by making changes as detailed below (additions appear underlined; deletions appear as ~~strike-through~~):

Amend §4.4.1, LIMITATION OF AREA OF ACCESSORY USES, as follows:

1. No accessory use or uses within a building shall occupy more than a combined total of 25 per cent of the floor area of the principal building, other than required off-street parking, except that an accessory dwelling unit may occupy up to the lesser of ~~750~~ 950 square feet of habitable space or ~~30~~ 40 percent of the floor area of the principal building by right or, by Special Permit, up to the lesser of ~~950~~ 1200 square feet of habitable space or ~~30~~ 40 percent of the floor area of the principal building.
2. No accessory use or uses not within a building shall occupy more than a combined total of 25 per cent of the unbuilt lot area, or of the required rear yard area, other than required off-street parking or outdoor seating for a licensed Food Vendor as defined in Article 8.10 of the Town's General By-Laws.
3. No accessory use, except accessory dwelling units, shall occupy part of the required front or side yards, except off-street parking as required in M-1.0, M-1.5, M-2.0, and M-2.5 Districts and in business and industrial districts, and as provided in §§ **5.44**, **5.53**, **5.63**, and **5.72**.

Amend §4.05.3.b.1, ACCESSORY USES IN RESIDENCE DISTRICT; ACCESSORY DWELLING UNITS, as follows:

1. In any residence district, no accessory use shall be permitted which involves or requires any of the following:
 - a. The employment of any persons who is not resident in the dwelling unit, other than a domestic employee, except:
 1. Attendant or attendants to an accessory garage or parking space;
 2. Employee or employees of Uses 13, 14, 19, 20, 52, 63, 64, 66, 68 as permitted under § **4.07** and Uses 58, 58A or 59 as permitted hereunder and in § **4.07**.
 - b. The maintenance of a stock in trade, except for Uses 63, 64, and 68 in § **4.07**, or the use of show windows or displays or advertising visible outside the premises to attract customers or clients, other than professional announcement signs, except as

provided for Use 64 in § 4.07.

2. An accessory use in a dwelling unit in any residence district as permitted under § 4.07, Uses 58 or 59, which requires a special permit shall be subject to the office parking provisions of § 6.02 unless otherwise modified by the Board of unless otherwise modified by the Board of Appeals, by special permit.

3. Accessory Dwelling Units

- a. Intent: Accessory dwelling units are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit and meeting the requirements of this Section. Accessory dwelling units are intended to advance the following:

1. To provide flexibility for families as their needs change over time and, in particular, provide options for older adults to be able to stay in their homes and for households with disabled persons;
2. To increase the diversity of housing choices in the Town while respecting the residential character and scale of existing neighborhoods;
3. To provide a non-subsidized form of housing that is generally less costly to produce and more affordable than similar units in multifamily buildings;
4. To add housing units to Brookline's total housing stock with minimal adverse effects on Brookline's neighborhoods.

- b. Accessory dwelling units in single family owner-occupied buildings shall conform to all the following provisions:

1. Maximum square footage. An accessory dwelling may be created with up to ~~30~~ 40 percent of the existing habitable space on the property or ~~750~~ 950 square feet of habitable space, whichever is less.

An accessory dwelling unit which exceeds ~~750~~ 950 square feet of habitable space or ~~30~~ 40 percent of the existing habitable space on the property, whichever is less, may be approved by Special Permit, provided that it does not exceed ~~950~~ 1200 square feet of habitable space and provided further that ~~documentation is submitted showing that a permanent household member with a handicap or illness, not of a temporary nature, requires the aid of a resident caregiver to aid a family member. This Special Permit may require an additional off-street parking space.~~

Amend §4.05.3.b.2 by deleting it and substituting the language as follows:

2. Owner-occupancy. An Applicant for a permit to create an authorized Accessory Dwelling Unit shall seek approval in a written form to be provided by the Town. The Applicant shall express its intent to proceed either as a primary owner-occupant of the subject property or as an absentee owner-investor. A primary owner-occupant may meet this requirement via owner-occupancy of either the primary or the accessory dwelling unit.

If the Applicant chooses to apply as a primary owner-occupant, a partial tax exemption for the property (as documented on the Town Assessor's Residential Exemption public database) shall be secured within 24 months from the date of permit issuance. Subsequent purchasers of the property must secure the aforesaid exemption within 24 months of their purchase.

If the Applicant chooses to apply as an absentee owner-investor, an affordable housing deed restriction shall be secured by the Applicant and recorded for the approved Accessory Dwelling Unit. This deed restriction recording shall be completed within 24 months following the date of permit issuance. The deed restriction shall be in a form approved by the Town of Brookline and extend for a period of not less than 15 years. The deed restriction shall restrict rental occupancy of the approved Accessory Dwelling Unit to households whose income does not exceed 80 percent of the Boston-Cambridge-Quincy HUD Metropolitan Area Median Income (AMI) as published annual by the U.S. Department of Housing and Urban Development (HUD).

Failure to comply with any of these requirements may result in the suspension of the Certificate of Occupancy for the Accessory Dwelling Unit.

An owner may choose to change their status from owner-occupant to absentee owner-investor at any time by notifying the Town of Brookline in writing at which time they will be subject to absentee owner-investor requirements, including an affordable housing deed restriction.

Amend §4.05.3.b.3 as follows:

3. **Building envelope.** An accessory dwelling unit may be created in an existing building or accessory building if the building envelope is not expanded and any increase in FAR stemming from the creation of the accessory dwelling unit does not produce a resultant FAR greater than 120% of the allowed FAR in the current Zoning By-Law. An expansion of the building envelope or conversion of the garage to create an accessory dwelling unit shall only be allowed by Special Permit and only if the resultant FAR is no greater than 120% of the allowed FAR in the current Zoning By-Law and all other dimensional requirements town and zoning regulations are met. The provisions of subsection 1.a. and e. of Section **5.22** shall not apply to the creation of accessory dwelling units.

Amend §4.05.3.b.4 to remove subparagraphs a, b, and c as follows:

4. Exterior appearance. A single family building containing an accessory dwelling unit ~~must exhibit no exterior evidence of occupancy by more than one family, including, but not limited to the following:~~
 - a) ~~Having~~ shall have no more than two ~~one~~ means of access/egress facing the street upon which the property faces;
 - b) ~~Having no more than one street number address; if the accessory dwelling unit has a second mailbox or mail delivery slot, it shall not be visible from the street;~~
 - c) ~~Having no electric, gas, water meters, or sub-meters other than those serving the principal dwelling unit of the building in which it is situated, unless required by the utility service provider.~~
5. Exterior alterations are permitted, provided they are in keeping with the architectural integrity of the structure, including but not limited to:
 - a) The exterior finish material should be the same or visually consistent with the exterior finish material of the remainder of the building;
 - b) The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
 - c) Trim should be consistent with the trim used on the remainder of the building;
 - d) Windows should be consistent with those of the remainder of the building in proportion and orientation.
6. Parking. A single family property with a by right accessory dwelling unit will conform to parking requirements as applicable to single-family homes with no accessory dwelling unit. Existing setback requirements will apply to all parking.
7. Maximum number of occupants. The total number of individuals residing in the principal and accessory dwelling units combined may not exceed the number allowed in the principal dwelling unit alone, under **Section 2.06 "F"** definitions for family.

Delete §4.05.3.b.8 as follows and renumber all remaining subparagraphs:

8. ~~Minimum age of principal dwelling unit and additions thereto. The creation of an accessory dwelling unit shall only be allowed on properties where the~~

~~most recent Certificate of Occupancy was granted at least five years prior to the date of application to create the accessory dwelling unit.~~

- ~~98.~~ Conversion of garage space. An accessory dwelling unit that is created by conversion of a pre-existing garage, including an existing garage in a separate structure from the primary residential building, may be approved only by Special Permit. Garage space eligible for conversion to an accessory dwelling unit must have been constructed five or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by an original building permit or other documentation satisfactory to the Board of Appeals. The provisions of Section 5.22, Exceptions to Maximum Floor Area Ratio Regulations for Residential Units **1.e** prohibiting replacement of garage parking to a location exterior to the house does not apply to this subsection.)
- ~~109.~~ Conversion of accessory structures. An accessory dwelling unit may not be created in an accessory structure, except in a detached garage, as set forth in **paragraph 9** of this section.
- ~~110.~~ Allowable means of egress. An accessory dwelling unit must have two means of egress that conform to the applicable requirements of the Building Code. If the second means of egress requires an exterior stairway, any such stairway will require a Special Permit and may not exceed more than one story in height nor be visible from a public way.
- ~~121.~~ One accessory dwelling unit per lot. No more than one accessory dwelling unit shall be allowed per lot.
- ~~1312.~~ No separate ownership. No accessory dwelling unit shall be held in separate ownership from the principal structure/dwelling unit; at no time shall an accessory dwelling unit, or the building of which it is a part, be deeded as a condominium unit.
- ~~1413.~~ Curb cut limit. Accessory dwelling units may not be located on any lot which is accessed from any public or private street by more than one curb cut, except for lots having more than one pre-existing curb cut for a period of at least five years.
- ~~1514.~~ Minimum rental period. Rental of either the accessory dwelling unit or its associated primary dwelling unit shall be for a term of not less than six (6) months and shall be subject to a written rental or lease agreement.
- ~~1615.~~ Historic districts. Where a building is located within a local historic district and therefore subject to the procedures required under Article 5.6 of the General By-Law, any decisions of the Brookline Preservation Commission shall take precedence over the criteria and procedures set forth above, but

the Preservation Commission may be guided by the provisions of this Section in addition to its own criteria and procedures.

~~17~~16. Recording at Registry of Deeds. Before a Certificate of Occupancy is issued, the property owner of any accessory apartment shall record with the Norfolk County Registry of Deeds or with the Land Court a certified copy of the approval, in a form prescribed by the Building Commissioner or, if required, the Special Permit. Certified copies of the recorded documents shall be filed with the Building Department.

Amend §4.05.3.b.18 (now renumbered 17) as follows:

~~18~~17. Change of ownership. When ownership of any residential property containing an existing accessory dwelling unit changes, the new property owner shall within 30 days of the title transfer, file with the Building Commissioner a sworn affidavit attesting to continued compliance with the requirements of this section and all applicable public safety codes, at which time the Building Commissioner shall conduct a determination of compliance with this Section.

~~The new property owner shall certify annually thereafter on the first business day of January, or upon transfer to a new owner as provided above, continued compliance with the requirements of this section in a form acceptable to the Building Commissioner.~~

~~19~~18. Termination. A property owner who chooses to discontinue an accessory dwelling unit shall notify the Building Commissioner in writing within 30 days following such action.

~~20~~19. Enforcement. A property owner who fails to recertify as required an accessory dwelling unit or otherwise comply with all provisions of this section shall be subject to regulatory enforcement by the Building Commissioner. The Building Commissioner shall seek advice and counsel from the Director of Planning and Community Development when there is any question in the application of the criteria contained in this Section and in the approval of any permit for accessory dwelling unit approval.

The Building Commissioner may re-inspect the property for compliance with the Zoning By-Law and health and safety regulations, including but not limited to when there is a change of ownership.

~~21~~20. Public listing of approved units. A listing of all accessory dwelling units shall be maintained by the Town in such a manner as to be accessible on the Town of Brookline website.

Amend §4.05.3.c as follows and renumber all remaining subparagraphs:

- c. Pre-existing unauthorized accessory dwelling units may be approved by the Building Commissioner subject to the following requirements:
 1. The property owner shall submit an application request in a form prescribed by the Building Commissioner;
 2. ~~The property owner must provide evidence, in a form satisfactory to the Building Commissioner, that the accessory dwelling unit was constructed five or more years prior to the date of adoption of this Bylaw section.~~
 - 3~~2~~. The pre-existing accessory dwelling unit must comply with all requirements of the accessory dwelling unit section of the Zoning Bylaw; however, the Building Commissioner may approve an accessory dwelling unit with habitable space not exceeding the lesser of 1200 square feet or 30 40 percent of the floor area of the principal building.
 - 4~~3~~. Before approval of an existing accessory dwelling unit, the Building Department shall conduct an onsite inspection for compliance with all applicable Building Code requirements and other applicable provisions of this Section.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This Warrant Article proposes to amend the sections of the existing Zoning Bylaw relating to Accessory Uses and Accessory Dwelling Units (Sections 4.04 and 4.05).

In November 2019 Town Meeting voted to amend the Zoning Bylaw by adding a section which authorized the creation of Accessory Dwelling Units (ADUs) in all single-family residential properties in Brookline. The purpose of that Article was to encourage homeowners with a range of life-cycle housing-related needs—including many homeowners wanting to “age in place”. Such needs may be met by being able to create a small second dwelling unit as part of one’s existing home.

Since the passage of the 2019 ADU article, only a few ADU-related applications have been received, including for the legalization of existing unauthorized units. Considerable community support has been expressed to make the existing ADU Bylaw more user-friendly by reducing and eliminating non-essential requirements and restrictions in the current Bylaw which may serve to discourage those who might otherwise seek to create an authorized ADU.

This Warrant Article removes or relaxes currently restrictive provisions in order to encourage the creation of more Accessory Dwelling Units in Brookline. These changes include:

- Increasing the maximum allowable ADU living area from 750 to 950 square feet;
- Eliminating the current five-year minimum ownership (“look-back”) period before a current owner’s ADU application can be approved;
- Eliminating restrictions on separate mailing address, separate mailboxes, separate utility metering, and second street-facing egress.

If a non-owner-occupant applies for an ADU, in addition to complying with all other ADU bylaw requirements, the non-owner occupant will be required to deed-restrict the ADU for a minimum period of 15 years during which time the rent and income of the occupant must be certified by the Town as affordable.

Further ADU-friendly amendments may be brought to a future Town Meeting following the possible adoption of a new State statute that may override some current local zoning authorities relating to ADUs.

SELECT BOARD’S RECOMMENDATION

ADVISORY COMMITTEE’S RECOMMENDATION

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