

**BOARD OF APPEALS
Town of Dover**

Meeting Minutes
February 23, 2023

Chairman R. Alan Fryer called the meeting to order at 7:00 p.m. remotely via Zoom participation.

Present were Board Members LaVerne Lovell and Associate Members Michael Donovan and Nancy Greene, Michelle Fren, Interim Planner Laura Harbottle, and Planning Board Member Jody Shue.

Documents and Exhibits Used

1. A draft, updated as of February 21, 2023, of the Planning Board's proposed warrant article to amend sections 185-5, 185-10 and 185-43 of the Town Bylaws.

1. Request by Michelle Fren to withdraw her application for relief without prejudice.

Mr. Fryer began the meeting by explaining that the Board had received an application for a relief from Michelle Fren, of 209 Dedham Street, present this evening, looking for approval of an accessory apartment. However, because her house was not built before January 1, 1985, under the current bylaw she has a problem; so, given that the Planning Board is in the process of suggesting amendments to the bylaw she has asked for leave to withdraw her application without prejudice. He asked if anyone on the Board had any concerns about that.

Mrs. Greene asked Mr. Fryer to explain what "without prejudice" meant. He explained that if anyone applied for relief from the Board and the relief is denied, the applicant cannot come back to the Board for similar relief for at least two years. If the application is withdrawn before the Board acts on it, then the applicant hasn't waived the right to come back in less than two years.

Mrs. Lovell moved to approve the request by Michelle Fren to withdraw her application without prejudice, seconded by Mr. Donovan. Mr. Fryer asked if there was any discussion; there was none. The Board voted unanimously to approve the request. Mr. Fryer suggested that if the bylaw was approved at Town Meeting, then Ms. Fren might want to consider renewing her application at that time. Ms. Fren asked how long it would be until the bylaw change took effect, and was told that zoning bylaws have to be submitted to the Attorney General's Office for approval, so it could be a period of months, but she could follow up with the Town Clerk and the Planning Board for updates.

2. Draft of proposed bylaw for accessory dwelling units.

Ms. Shue began by explaining that Accessory Dwelling Units (ADUs) are basically residential living units which are either attached to, or detached from, the primary residence on a single-family home lot. This type of residential living unit is self-contained in that they have their own

sleeping, cooking and sanitary facilities, and a separate entrance from the main entrance to the primary home.

Ms. Shue said that the reason for the ADU bylaw update is to take what's in place now in Dover and to make changes to it for the purpose of clarification and accessibility for the residents of Dover. Dover currently allows what are termed Accessory Apartments in some circumstances. MGL Chapter 185, sections 40-43 refer to accessory apartments; it was approved at Town Meeting in 1986. Dover was an early adopter of this idea of accessory dwellings or accessory apartment units. The existing bylaw on the books allows accessory apartments under certain circumstances and under the oversight of the Zoning Board of Appeals through the Special Permit process. The current bylaw limits construction of accessory apartments to houses that were legally occupied on January 1, 1985 and that have not been substantially enlarged since then; it also caps the total number of ADUs allowed in town to 10% of the total housing stock. Dover was ahead of its time in the adoption of this accessory bylaw in 1986, but it is time to revisit and maybe update it.

Ms. Shue said that there has been a lot of feedback from residents about the availability and affordability of housing options in town. The Planning Board's goals with the update are to do three things primarily: to broaden the types of housing available to households of all incomes, ages and sizes to include people like caregivers, college kids or young adults returning home to help aging parents; and to address housing affordability and flexibility; but to do so while limiting the impact on neighborhoods, the residential character of Dover, and town infrastructure. The third piece of this is to clarify and simplify to some extent the necessary steps and regulations so that approval of ADUs can be efficient for homeowners and for builders and other interested parties in town.

The Planning Board thinks that now is a remarkably good time to be doing this for a few reasons. One is that in 2021 Massachusetts passed a law often referred to as the Housing Choice Bill, which was signed into law in January of 2021. The new law allows municipalities to adopt certain zoning measures like this one by a simple majority vote (50 percent plus one), if we meet certain criteria when we bring the bylaw to Town Meeting. Those criteria include: ADUs must be a maximum of 900 square feet. It could be 50 percent of the primary dwelling square footage, or 900 square feet, whichever is less; so if you have a 2,000 square foot home, fifty percent would be a 1,000 square feet, and therefore 900 square feet, and that's really driven by the desire not to fundamentally change the overall look and feel of our residential areas; and to make sure that these accessory dwelling units remain accessory to the primary structure as opposed to becoming two, three, or four thousand square foot units. Part of the Housing Choice Bill is the requirement that attached ADUs (those which are literally physically attached to the primary residence: an attic, a basement, an extension or addition to the home) must be allowed by right, meaning not requiring a Special Permit. If a detached ADU is brought to the attention of the town, it could be allowed by right or by Special Permit. Those are some of the parameters of the Housing Choice Bill that we've been thinking about as we've been drafting this update.

As background: in 2012, Dover's Master Plan indicated the need to increase the types of housing available and to address overall housing needs in Dover. In 2020, there was a bylaw update that was in development and then withdrawn because of Covid and the need to keep

Town Meeting brief. In 2021, a housing production plan was developed which also indicated the need to increase the types of housing available in Dover. There was a lot of feedback from residents concerning affordability and we tried to bring an update to MGL Chapter 185, sections 40-43 for Town Meeting again, but again withdrew due to Covid considerations. In 2022, we prepared it but withdrew it based upon feedback from residents and feedback from the Board of Appeals.

We reviewed the process for bringing zoning updates to Town Meeting and think we've done it better this time. The process has included an ongoing series of public meetings and open hearings beginning in 2020, and it's something we've been working hard on and thinking a lot about. We think we've developed a bylaw that's tailored specifically for Dover. There are many models in surrounding towns, but we really want to think hard and long about what makes sense for Dover and to take advantage of some of the flexibility provided by the Housing Choice Bill that is offered. The bylaw we've developed meets the growing needs of residents in town. It advances town housing goals to a certain extent; it obviously needs to be consistent with other zoning bylaws (the overall zoning bylaws) in town. We're changing the definition to make it consistent with the state utilization of the term ADU as opposed to accessory apartment. We are proposing to follow the Housing Choice Bill parameters by making attached ADUs available legally but by right with site plan approval from the Planning Board. Currently, a resident who wants an attached ADU would need to pursue a Special Permit from the Board of Appeals; but if we follow the Housing Choice Law, that would change, which we're proposing. However, detached ADUs, though the Housing Choice Bill allows them to be either available to residents by right or by Special Permit, will remain accessible by Special Permit. A Special Permit would continue to be needed for any ADU in a detached structure. There are a reasonable number of barns or detached garages, and other structures like that in Dover, so it made sense to leave that where it is, in the purview of the Board of Appeals.

Another issue, that of short-term rentals, has been addressed and is spelled out in the last line of the draft bylaw. Currently, there's no specific language about short-term rentals of ADUs in the existing bylaw; we are proposing to include it in the update so that's a reasonably big change. The square footage doesn't change – the maximum is 900 square feet to keep in accordance with what we have, but also with what the state is saying with the Housing Choice Bill; we are looking to remove the limitation on ADUs in newer homes; the limitation that ADUs would only be available in homes built or occupied by January 1, 1985 would be removed in the update, as would the 10 percent limit on ADUs in Dover. Those are the key highlights.

We've also reorganized the bylaw and are trying to making it very clear to residents what the process is; to be very clear about the role of the Board of Health in the process, as all Board of Health regulations apply when it comes to water and waste removal. Generally speaking, all zoning obviously applies to ADUs, and we've tried to spell that out so there's less confusion. If you are coming in with an attached ADU, here's the process; if you're coming in with a detached ADU here's the process.

We welcome your feedback when it comes to bringing this to Town Meeting. Since we already have an Accessory Apartment bylaw on the books, we're not discussing whether we allow them in Dover. If this does not pass at Town Meeting, the existing bylaw stays on the books, so

Accessory Apartments will continue to be available to residents living in homes occupied on or before January 1, 1985. People who want a waiver of that or another sort of zoning relief would continue to come to the Zoning Board of Appeals. We'd appreciate your feedback and thoughts on what we've circulated.

Mr. Fryer thanked Ms. Shue for her presentation and said this was certainly a more simplified and streamlined proposal than last year, and therefore easier to deal with. He asked if there was a definition of what constitutes a short-term rental.

Ms. Shue said it was referenced in the bylaw on line 10, section d10: An ADU shall not be used as a short-term rental as defined in section Chapter 185, sections 5 of the zoning bylaw; so we have a definition of a short-term rental which is 30 days or less. Mrs. Greene asked how that would be monitored. Ms. Shue said the goal is to create a bylaw that makes it easy for people to do the right thing. It can't be fully monitored as we're acting on the assumption that people will do the right thing. If we streamline it, we make it a little bit easier. We have a zoning enforcement officer in town, and we have reviewed this very carefully with him, and gotten extensive feedback. Ms. Harbottle had a conversation with him to make sure that all of his concerns and points of feedback were put into this draft. Ms. Harbottle said that cities and towns all over the country are dealing with the short-term rental problem, especially in tourist areas. Enforcement is difficult anywhere, but sometimes, for better or worse, enforcement comes from the neighbors, if they see people coming and going endlessly without an obvious reason, they might make a phone call and ask questions, or request someone to check on the concern. Ms. Shue said that it was placed specifically in the bylaw so that the intent of this bylaw would be completely clear.

Mrs. Greene said she had read that you can't put an additional driveway in; you must use the existing driveway and have adequate parking. Ms. Shue said the intent of this bylaw is not to move us away from single-family residences, we don't want this to become a town with lots of driveways all over the place, so the primary residence maintains its status as the primary residence and an accessory dwelling unit is exactly that: accessory to the primary residence.

Mrs. Lovell asked if the Planning Board had had a lot of applications for accessory apartments; she had been on the BOA for 24 years, and didn't think there had been more than three cases. She asked if a Winnebago or a camper could be considered an ADU, as she didn't see any specifics regarding that. She also wanted to know if the ADU would use the same systems as the primary residence; as an example, if there was a three-bedroom septic, and there are already three bedrooms, then you could not have an ADU? Ms. Shue answered that this issue would absolutely be determined by the Board of Health; and the Planning Board had clarified that in writing. Mrs. Lovell asked if there was any concern that people would move into Dover because of the availability of ADUs. Mrs. Lovell said she had many questions about this, but that she was not opposed to it, she was trying to understand how it would work.

Mr. Fryer said that the owner of the property had control over who occupied the accessory unit. Mrs. Lovell said her concern was making it affordable for other people. Ms. Shue said the feedback they had been receiving was more in line with "my dad has been widowed and I'd really love him to live closer and I have the space above my garage"; or a teacher in town or at

the school district who's looking for a place to live but can't afford to live in Dover; but maybe a homeowner has a detached ADU that would be an affordable place which the homeowner would want to rent to that person; or a caregiver or a young family with a baby who's moving back in with their parents essentially into an ADU on the primary residence. That was the vision around this and the logic in a lot of communities around Dover. Ms. Shue said there are about 40 communities in the surrounding areas that now allow ADUs. Dover already allows this; we just limit it to older homes. Needham passed an ADU bylaw update in 2020, Wellesley passed one in 2022; Weston, Carlisle, Lexington, Westwood, Newton are among many towns that have this now; the numbers are not particularly dramatic for housing growth, even in places like Newton, which has had ADUs on the books for about 20 years. They've had 73 applications as of 2017, which is about three and a half per year in that 20-year period, so it's not like there will be huge growth. That's not the expectation, and the only way they happen is if a homeowner pursues one and wants to invest in it.

Mrs. Greene asked about the Winnebago/camper question that Mrs. Lovell had raised. Ms. Harbottle replied that whatever space is used as an ADU has to meet the building code for habitation. It has to be connected to a septic system – you can't have a holding tank on an RV and maintain that as an ADU; an ADU has to be compliant in all the other ways: the size of the rooms, the setbacks, etc. Based on her experience working for the town of Scituate where they made a similar change in the late 1990s where they had a restriction on when the house had to be built, and removed it, and they did get a few more ADUs but not really that many. She thought approximately 80 during her 20 years there. She thought the great majority of them were built for family members, not as rentals; and they were for situations with an elderly relative or young relatives that you wanted to support as they were getting out into the world and give them a place to live, as it can be difficult to get that down payment and to get into the housing market for the first time. For some people that's an issue and it's to support people like that, but primarily older relatives who wanted to be with their adult kids and still wanted some independence was the main thing it was used for.

Mr. Fryer said 900 square feet is not a lot of space, so it really is a situation for one or two people. He had a few suggestions for the wording in the bylaw: in Article 20 in the first paragraph it says that line 31 is being deleted and new lines 31 and 32 are being added. He thought it would be helpful to say that existing lines 32 through xx are renumbered 33 through xx. Ms. Shue said that was said in number two just below, was that sufficient; Mr. Fryer suggested it be put in both places to avoid confusion.

Ms. Harbottle said that she had discussed the final language for the warrant today with Mr. Valente; this language came from Town Counsel Nina Pickering-Cook. Ms. Harbottle said she had been told that today was the last day to make changes to the warrant language, but that she would try to get it changed. Mr. Fryer had one or two other suggestions in terms of language: he suggested it would be helpful in the first reference to Accessory Dwelling Units to put in parentheses (ADU) to indicate the shorthand term that would be used going forward to avoid any confusion. Mr. Fryer also noted that in section d, paragraph seven about parking, where it says that the Board of Appeals or the Planning Board may require screening of such parking to protect the neighbors, that it was possible that there could be other reasons to require screening; by putting that in and not considering other reasons for it you could create a limitation

that screening can only be required to protect the neighbors and not to serve some other purpose – such as noise or the view from the street. He suggested that they might want to either take that out or put in some more general language – for example; say protect the neighbors or for such other purposes as are necessary to whatever your general objective is. He added that though the language may be finalized in terms of putting it on the warrant, amendments can always be made on the floor of Town Meeting to deal with this type of thing.

Ms. Shue said she was looking at the bylaw as he spoke, and thought this was a great point. He added that if there might be multiple reasons to do something like screening, you would not want to inadvertently prevent yourself from serving those other reasons when they apply. Screening from the neighbors, screening for the benefit of the neighbors or for other reasons may be something that's really important in a given situation, a particular ADU application, and you don't want to have an applicant avoid the screening because they can argue it's not necessary to protect the neighbors. Ms. Shue said they would work on that, because they wanted to get it right.

Mr. Fryer noted that in paragraph b of Chapter 185, section 43, it appeared to have an extra word in the first sentence: “an attached ADU shall be defined as an accessory dwelling unit that is located attached to or within...” and the word located should be removed. He also suggested that in section c, paragraph 3, the wording be switched to “An application for a special permit for a detached ADU ” would be clearer. He had no major issues in terms of substance for this bylaw.

Mr. Fryer asked if any of the Board members had any specific concerns or suggestions or comments. Mr. Donovan asked if there was any language or information on the minimum separation of buildings with a detached ADU. Ms. Shue replied that all of the zoning setbacks in the existing bylaw apply here to a single-family residence, so any setback requirements for the lot apply. Mr. Donovan restated his question to try to understand what the distance requirement was between the two dwellings. Ms. Harbottle said that would probably be a function of the Site Plan Review. In that situation the Planning Board would look at it for the site plan and the Board of Appeals would look at it for the special permit. Ms. Shue said that the Special Permit process is not changing from what it is currently.

Mr. Fryer explained further that if it's coming to the Board because it's a detached ADU, we would ensure that the proposed ADU meets the requirements of the bylaw and would also make a determination that what's proposed is not substantially more detrimental to the neighborhood, which gives some control over what it looks like, how it's situated, is it too close to the house next door; even if it's within the setback requirements it still might be a problem. If a lot of trees were to be taken down to put the ADU in, that might change the look and feel. Mr. Donovan said that his concern was more that should a problem arise with an ADU being placed very close to a house on the next lot, were there quantifiable distances that must be adhered to by law. Mr. Fryer spoke to the setback and lot line requirements which would help in determining suitability of projects, and added that the Board had the authority to deal with those issues.

Mr. Donovan asked how bylaws deal with neighborhood complaints; for example, if an ADU was rented to a bunch of college kids for a semester; how do the neighbors or the town enforce

keeping it quiet or making sure the lights and music aren't blaring at two o'clock in the morning? Are there any enforcement mechanisms which can put on the ADUs for that? Ms. Harbottle replied that actually in a lot of ways the ADU would be easier to control than a single-family house because a single-family homeowner can rent out the house and can be somewhere else while the house is rented. It's a requirement for ADUs that the owner has to be living on the property for most of the time that that ADU is in existence, so most people would not tolerate that kind of situation. Mr. Fryer added that there are ADUs in town now and was unaware if there had been problems but hadn't heard of any; also 900 square feet is not a lot of space if you were trying to have more than two people living there.

Mr. Donovan asked about how ADUs are treated for taxation purposes. Ms. Harbottle responded that she had spoken to Mrs. Gow, the Town Assessor, about how an ADU would be taxed, and Mrs. Gow said that when there is an extra kitchen or an extra bathroom those are taxed at a higher tax rate than just basic residential space, but otherwise the space would not be taxed any differently from any other residential space.

Mr. Donovan asked whether, since an ADU on a property increases the value of the property there is anything in the bylaws to prevent ADUs from being either sold or traded. Ms. Harbottle responded that the ADU has to be on a property with a single-family house; it can't be on its own lot. The zoning laws that Dover has which govern how land could be divided are still going to be in effect so it cannot be spun off onto a separate lot. It would be very difficult and hopefully impossible with people watching what goes on, to turn them into condominiums. Ms. Shue added it's a single-family home lot with a primary residence and an accessory structure and they cannot be divided unless the whole lot is divided. She added that they were talking about a detached ADU, which would need its own water and its own waste system, and many other requirements along with that, and it wouldn't be a simple process at all.

Mr. Donovan brought up another scenario: could someone sell the right to use the house for the next hundred years for the sum of \$350,000 dollars which is essentially selling it? He used the camp meeting grounds at Martha's Vineyard as an example: all the cottages on the property are owned by the people living in them but they do not own the land around them. Mr. Fryer said that was not an average situation, and he did not think anything like that would be permitted under the Dover bylaws. Mr. Donovan said he just wanted to raise the issue. Ms. Shue said it was a great question and that the Planning Board have had a number of meetings on this and gotten some amazingly nuanced questions on this, which have been very helpful as it has helped to develop a better bylaw and be better prepared for Town Meeting.

Mrs. Lovell asked about a lighting bylaw, because many people have lights that stay on all night. She had received a copy of such a bylaw from the town of Weston. She thought it would be helpful to request outside lights be off by a certain time, like 11:00 PM. Mr. Fryer said that maybe Dover needs a bylaw that addresses lighting issues, as it's not something that would be limited to ADUs. He didn't know if the Planning Board was the right board to deal with that. Ms. Lovell offered to email the bylaw to Ms. Shue. Ms. Shue said they do reference lighting when conducting a site plan review, particularly for pools and other things. Mr. Fryer added that the Board of Appeals has dealt with this, as during the approval process on County Street, the Board addressed lighting issues so that the neighbors would not be adversely affected. That type

of facility would have outside lighting which you wouldn't normally have for a single-family home. He thought it reasonable to raise the issue to be addressed. Mr. Fryer asked if there were any other questions or concerns about the proposed bylaw. There were none.

Ms. Shue said this meeting had been very helpful, and they would look at those suggestions on the specific language. The Board of Health has also reviewed this and given sort of verbal support for this bylaw update. It is expected that they will vote as a board in March to support the bylaw update at Town Meeting, and hoped that the BOA might do something along those lines, as a mechanism for us to express support from the Zoning Board of Appeals for this endeavor. Part of the Planning Board's plan is to go to Town Meeting with as much support from the various boards as we possibly can, to make it a smooth process.

Mr. Fryer responded that the Board of Appeals is different from other boards, kind of quasi-judicial in nature. Because the Board makes rulings and decisions on specific matters that come before it, it was probably not appropriate for the Board to take a formal position on this, but it would certainly be appropriate for the Planning Board to say that you have had input from the Board of Appeals.

Ms. Shue said she appreciated that, and thanked the Board for listening, and the opportunity to be at the meeting tonight. Mr. Fryer thanked them for attending, and wished them luck moving forward in the process.

At 8:00 PM, a motion was made and seconded to adjourn the meeting.