

TOWN OF BROOKLINE  
ADVISORY COMMITTEE  
PLANNING AND REGULATION SUBCOMMITTEE

**ARTICLE 19 -ACCESSORY DWELLING UNITS**

The Planning and Regulation Subcommittee held a Public Hearing on Warrant Article 19 on October 3, 2019. Attendees at the Hearing were Petitioner Roger Blood. Subcommittee members present were Steve Kanes (Chair), Lee Selwyn, Carol Levin, Neil Wishinsky, Carlos Ridruejo, and Ben Birnbaum. Also present were Victor Panak (Planning), Regina Frawley (TMM Pct. 16), Frank Caro (TMM Pct 10), Henry Winkelman (Brookline Commission on Disability) and John VanScoyoc (Advisory Committee & TMM Pct. 13).

At the October 3, 2019 hearing, Petitioner Roger Blood explained WA 19 would amend the Brookline Zoning By-Law to permit Accessory Dwelling Units (“ADU”). ADUs are:

A separate and self-contained dwelling unit located in a single-family detached building, or in a detached building located on the same lot as a single-family building as an accessory or subordinate use to the primary residential use of the property.

WA 19 will permit the construction of new ADUs and provide a mechanism for legalizing existing ADUs currently in violation of the Zoning By-Laws.

The Petitioner identified four benefits to creating ADUs:

- 1) Flexibility for families as their housing requirements and financial resources change such as creating income or assistance opportunities for older adults and households with disabled persons.
- 2) Increase diversity of housing choices.
- 3) Creation of a less costly but non-subsidized type of housing.
- 4) Creation of additional housing units with a minimal impact on neighborhoods.

Only owner-occupied homes, in which the owner-occupant has been in residence for a minimum of 5 years, will qualify to construct an ADU. The Warrant Article will limit the size of new ADUs to the lesser of 750 sf or 30% of the principal building’s habitable space. There is a mechanism to permit ADUs of up to 950 sf when there is a family member requiring a resident caregiver. Existing ADUs will be limited to 30% of the principal building’s habitable space.

**DISCUSSION**

The Subcommittee members expressed concern about WA 19’s effectiveness in blocking developers’ ability to construct multiple units in areas zoned single family. The Warrant contains a multitude of protections including:

1. An annual certification of owner-occupancy including upon sale of the primary residence.
2. A prohibition against separate ownership.
3. A minimum of 5 years since issuance of the most recent Certificate of Occupancy for the primary residence.

The Petitioner agreed to modifications to Sections 3.2.2 and 3.2.4.(3) to further strengthen the Warrant's protections.

In Section 3.2.2 a clarification was provided regarding how long the applicant must have owned the property. A third paragraph has been added to this section as follows:

***An owner-applicant for an accessory dwelling unit building permit or Special Permit must provide documentation satisfactory to the Building Commissioner or Zoning Board of Appeals, as applicable, that the owner-applicant has occupied the subject property for not less than five years prior to the application date.***

In Section 3.2.4.(3) the protections against an ADU becoming an independent dwelling unit were strengthened as follows:

- (3) Having no electric, gas, or water meters, **or sub-meters** other than those serving the principal dwelling unit of the building in which it is situated;

The Warrant also addresses concerns about units being built with the intention of being utilized for short-term rentals (Airbnb). The Warrant requires a minimum rental period of 6 months for both the ACU and the primary residence.

Members of the Subcommittee had a number of questions regarding proposed Section 3.3 which enables the Building Commissioner to approve pre-existing, unauthorized ADUs. The Petitioner explained this section is at the request of the Building Commissioner who is seeking the ability to inspect these units for both health-safety and building code matters. The Subcommittee requested, and the Petitioner agreed to, a modification to Section 3.3.(3) to clarify the intent of this section as follows:

- (1) 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 ~~exceeding 950 sq. ft., but~~ not exceeding 30 percent of the floor area of the principal building.

Henry Winkelman (Brookline Commission on Disability) spoke in favor of WA19, noting its importance to families with disabled members. Frank Caro also spoke in favor of WA 19, citing its importance as a resource to senior citizens.

The Petitioner noted Newton permits ADUs under its zoning by-laws and the use of the provision has been limited. The Petitioner will view this program a success if a few dozen ADUs are eventually built and anticipates only that magnitude of new units under the proposed zoning provision.

**Following discussion, the Subcommittee VOTED 6-0-0 for FAVORABLE ACTION on Article 19, as amended in Section 3.2.2, Section 3.2.4(3), and Section 3.3.(3), as follows:**

To see if the Town will amend the Brookline Zoning By-Law as follows.

Add, a new subsection c. to §2.01 - "A" DEFINITIONS, 1. ACCESSORY

- c. Accessory dwelling unit "ADU": A separate and self-contained dwelling unit located in a single family detached building, or in a detached building located on the same lot as a single family building as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of Brookline Zoning By-Law, Section 4.05 Paragraph 3.2.

Add a new sub section 5. to §2.15 - "O" DEFINITIONS

- 5. OWNER-OCCUPIED – Serving as the principal or year-round residence of the property owner of record as defined by the Town Assessor and as further documented in §4.05, Paragraph 3.2.

Add at the end of the sentence in sub section 1. of §4.04 - LIMITATION OF AREA OF ACCESSORY USES

, except that an accessory dwelling unit may occupy up to the lesser of 750 square feet of habitable space or 30 per cent of the floor area of the principal building by right or, by Special Permit, up to the lesser of 950 square feet of habitable space or 30 percent of the floor area of the principal building.

After "No accessory use" in sub section 3. of §4.04 – LIMITATION OF AREA OF ACCESSORY USES, add

, except accessory dwelling units,

To change the title of §4.05 to ACCESSORY USES IN RESIDENCE DISTRICTS;  
ACCESSORY DWELLING UNITS

To add the following new Section 3 to §4.05 – ACCESSORY DWELLING UNITS

3.1 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.

3.2. 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 percent of the existing habitable space on the property or 750 square feet of habitable space, whichever is less.

An accessory dwelling unit which exceeds 750 square feet of habitable space or 30 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 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.

2. Owner-occupancy. A property containing an accessory dwelling unit shall be owner-occupied, which requirement may be met via either the principal or the accessory dwelling unit. Qualifying owner-occupancy must be certified as a precondition for receiving a Certificate of Occupancy for the accessory dwelling unit and not less than once per calendar year thereafter, by an affidavit, in a form to be provided by the Building Department and signed by the owner-applicant. Copies of the completed Affidavits of Owner-Occupancy shall be retained by the Building Department.

Owner-occupancy shall be further certified by inclusion of the subject property in the listing of residential property tax exemptions as maintained by the Town Assessor, beginning not more than 24 months following, as applicable, the issuance of a Certificate of Occupancy for a new accessory dwelling unit or the transfer of ownership for a pre-existing accessory dwelling unit, and continuing for each Fiscal Year thereafter.

An owner-applicant for an accessory dwelling unit building permit or Special Permit must provide documentation satisfactory to the Building Commissioner or Zoning Board of Appeals, as applicable, that the owner-applicant has occupied the subject property for not less than five years prior to the application date.

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 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 are met. The provisions of subsection 1.a. and e. of Section 5.22 shall not apply to the creation of accessory dwelling units.

4. Exterior appearance. A 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:

- (1) Having no more than one means of access/egress facing the street upon which the property faces;
- (2) 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;
- (3) 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;

5. Exterior alterations are permitted, provided they are in keeping with the architectural integrity of the structure, including but not limited to:

- (1) The exterior finish material should be the same or visually consistent with the exterior finish material of the remainder of the building;
- (2) The roof pitch should be consistent with the predominant roof pitch of the

remainder of the building;

(3) Trim should be consistent with the trim used on the remainder of the building;

(4) 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.

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.

9. 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.)

10. 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.

11. 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.

12. One accessory dwelling unit per lot. No more than one accessory dwelling unit shall be allowed per lot.

13. 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.

14. 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.

15. 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.

16. 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. 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.

18. 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. 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. 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 special permit for accessory dwelling unit approval.

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

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.

3.3. Pre-existing unauthorized accessory dwelling units may be approved by the Building Commissioner subject to the following requirements:

- (2) The property owner shall submit an application request in a form prescribed by the Building Commissioner;
- (3) 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.
- (4) 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 30 percent of the floor area of the principal building.
- (5) 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.

To add the following to §4.07 – TABLE OF USE REGULATIONS, following Accessory Uses 51A:

Accessory Uses	Residence				Business			Industry
	S	SC	T F	M	L	G	O	I
<i>51B. Within a detached single-family owner-occupied dwelling in all zones or within an existing garage accessory to that dwelling, an Accessory Dwelling Unit as further defined and limited in Section 4.05, paragraph 2.</i>	Yes	Yes	Yes	Yes	Yes	Yes	No	No

To add, to §5.22- EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS,

at the end of Section 1. General Provisions, a, before “.”

, except for accessory dwelling units per Section 4.05(2)

at the end of 2 b.,

For purposes of this subsection only, an accessory dwelling unit, as per Section 4.05 paragraph 2 shall not be considered a separate unit.

Or act on anything relative thereto.

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