

**Ordinance Committee Minutes
Town Hall Council Chambers
November 27, 2023**

Present: Kenneth DiFazio, Chairperson
Gary MacDougall, Vice Chairperson
Arthur Mathews
John Abbott
Lisa Belmarsh

Also Present: Richard MacLeod, Town Solicitor
Robert Luongo, Planning Director
Eric Schneider, Principal Planner

Recording Secretary: Janet P. Murray

Chair DiFazio called the Ordinance Committee meeting to order at 6:00 p.m.

Measure #23 125 Proposed Change to Town of Weymouth Zoning Ordinance, Extending Village Overlay District

Councilor MacDougall made a motion to switch the order of the agenda to put 23 125 before 23 120 which was seconded by Councilor Mathews. Unanimously voted.

Chair DiFazio stated that since the last meeting the only information received as of November 13, 2023, is the recommendation by the Planning Board. He then read the recommendation into the record.

Chair DiFazio asked the proponents if there were any comments that they want to make before deliberations begin.

Attorney Gregory Galvin stated that his client, Mr. Jason Kennedy, an owner of one of the parcels subject to this bylaw change is present with him this evening. He continued that what was read is the argument that the Planning Director made to the Ordinance Committee in early November.

Mr. Galvin stated that he has been contacting the Planning Office, going back to at least March, and has notes in his files. He continued that at no time did the Planning Director ask for the application to be withdrawn or to hold off and study the entire corridor. He added that the Planning Director suggested, only a couple of weeks ago, to re-study the corridor and admitted that this lot is an eyesore. While the current B-1 zone allows for commercial use, it is unlikely that his client would be able to secure a loan. He stated that this is mixed- use with some commercial space, but also some residential space above it, where it can carry the property is more feasible.

Mr. Galvin stated that they believe this change works for this parcel and makes sense. They would respectfully request that the committee issue a favorable recommendation to the entire Council.

Councilor Mathews asked if Mr. Galvin had reached out to the neighbor who spoke at the public hearing.

Mr. Galvin stated that they have spoken to her at a number of meetings. He continued that she has requested to see the proposed plans. He stated that they have an idea of what they would like to build, but they need to get the change in the overlay district. He stated that they would then have to go to the Board of Zoning Appeals (BZA). There would be a public hearing and a neighborhood meeting.

Mr. Galvin stated that they have the resident's name and address and will keep her involved.

Councilor Mathews asked for clarification that they would only be able to build 19 units, by right, if the zoning is changed to Village Center Overlay District (VCOD) and that a special permit from the BZA would be required for more.

Mr. Galvin stated that he did not have his zoning book with him but believes, by right, two stories and up to 19 units are allowed.

Councilor Abbott asked how many units, approximately, they are looking at for the plans previously mentioned.

Mr. Galvin stated there would be three stories of apartments, but he is not sure what the number of units would be.

Mr. Kennedy stated that on the first floor there would be three commercial units, and on the second, third, and fourth floors there would be between 35 and 50 total apartment units for the building, depending on the final design.

Chair DiFazio asked the Planning Development representatives if they knew the minimum number of units that would require a special permit on that site, if it went to the VCOD.

Mr. Schneider stated that Mr. Galvin is correct that 19 units are allowed and that a request for 20 or more would trigger the need for a special permit.

Chair DiFazio questioned if the commitment to have residential traffic exit onto Vine Street is still planned.

Mr. Galvin stated that this is something that would be discussed at the BZA.

Chair DiFazio reminded the committee that whatever is decided, a two-thirds vote is required at the full Town Council.

Councilor MacDougall made a motion to recommend favorable action to the full Town Council on Measure 23-125 which was seconded by Councilor Mathews

Chair DiFazio noted that Greg Agnew, Planning Board member, had stated that “considering zoning changes on a case by case basis would set a bad precedent, and open the door to future one off requests.” He stated that he thinks that Mr. Agnew has a point, but he is not sure if it carries enough weight for him to take the vote one way or another.

Councilor Mathews stated that this proposal is not in the commercial corridor overlay district (CCOD), it is to extend one side of the street of the VCOD for the Landing area. He continued that, based upon testimony at the public hearing, it seems like this is a better fit to go into the VCOD rather than the CCOD.

Councilor Mathews stated that he does not want to go case by case, in terms of each project along Routes 53, 18, or 3A. He added that this is an opportunity to work with the free development in this town. He continued that he did not want to do an entire overview of the corridor again but did not want to do projects case by case, either; in this proposal, it is an appropriate fit to add it to the VCOD.

Councilor MacDougall stated that he has gone back and forth on this because there were some good points on both sides. He stated that this proposal is what is happening across town, building residential units with some mixed use. He added that looking at the map of the VCOD, it looks like it matches up and finishes out that area.

Councilor MacDougall acknowledged the Planning Board concerns about spot zoning. He pointed out that approval is still required as any change has to go through the Ordinance Committee. He added that he considers what people want, which is important. If they like this particular piece of property, which is blighted and needs to be updated, what better way to improve the town than by allowing for a zoning change, which, he noted is literally moving to the right a little bit and across the street. He stated that he recommends going forward with this change.

Councilor Belmarsh noted, for the record, that she had the opportunity to review the audio from the last meeting, and that audio is available for others. She pointed out that at two hours and six minutes, there was an exchange between Mr. Kennedy and Mr. Luongo. Mr. Luongo stated, in that exchange, that “that's the end of it. You just lost the break. That's it. I don't want to see you anymore.” She added that she hopes that these comments are not intended to indicate any type of retaliatory action.

Councilor Belmarsh stated that she believes that this is a reasonable request based on the area and she will be supporting the motion.

Councilor Abbott stated that he was not on this Council when either the VCOD or CCOD was approved. He continued that just because the zoning decision was made in the past does not mean that a new zoning decision cannot be made in the future. He added that support from the District Councilor who lives in the abutting neighborhood carries a lot of weight with him.

Councilor Abbot stated that the VCOD's scale and density of developments is smaller, so that potentially other residents in town do not end up with a five story building in their backyard like he has. He stated that it is important to recognize when there is support of the neighborhoods and District Councilor for redevelopment of specific properties, especially specific properties that are as unsightly as a rundown looking strip mall, that this input is valued and listened to. He stated that he will be voting in favor of this motion.

Chair DiFazio thanked the Planning Department for their overall overabundance of caution and that he appreciates the fact that they have been cautious about changing any future zoning. He continued that despite that caution, he will be voting affirmative in this request.

The Motion passed UNANIMOUSLY (5-0).

Measure #23 120 Proposed Amendment to Zoning Ordinance, Article II Section 120-6 and Article IV Section 120-13 Concerning In-Law Residence Structures

Chair DiFazio stated a constituent brought a matter of concern to him regarding Ms. Williams, the chairman of the Planning Board, speaking at an Ordinance Committee meeting. First and foremost, he stated that when Ms. Williams contacted him through Diane Hachey about speaking to the Ordinance Committee, she represented herself as the chairperson, wanting to make some comments. He continued that this was after the public hearing had been closed. During the Ordinance Committee meeting, to his surprise, she mentioned that she was now testifying as a resident of the community and not as the chairperson of the Planning Board. He continued that this is a potential violation of public meeting law. He suggested that the committee disregard any comments made by Ms. Williams who he thought was going to speak as the chair of the Planning Board, but instead, she represented herself as a citizen of the town.

Chair DiFazio stated that the committee reviewed the recommendations that came from the Planning Board. He noted that there remained a concern by Councilor MacDougall about who were the people that were going to be allowed to do this, whether it was kinship or other relationship.

Councilor MacDougall pointed out that bill H 4138 is on the floor of the Massachusetts State House and has a part that will allow for accessory dwelling units (ADU). This would allow people to build an ADU in their yards to increase housing production across Massachusetts. He stated that he believes that this is going to significantly change how property rights are viewed in Massachusetts- with people able to build units on their property.

Councilor MacDougall stated that he had sent an email to Chair DiFazio and Mr. Luongo on November 16, 2023, with recommendations around what he thought would be a compromise to this measure. He stated that he had concerns about the size restrictions; he thought that the size of the unit was too small. The current standard of 600 square feet is not very large for people that are putting in appliances, medical equipment, or things of that nature. He agreed that there is a need for rules around the size because there are some egregious things going on with people taking advantage of it. He also stated that he is concerned about some of the language defining

relationships. He pointed out that he did not know where this stands as he did not receive a reply to his email.

Mr. Luongo stated that he and Councilor MacDougall did speak on the phone about this. They discussed the size and agreed that 800 square feet would be a compromise. He pointed out that if someone wants to build larger, they have to apply for a special permit.

Mr. Luongo stated that as to relationships, this is an in-law apartment. He did not know how this could be worded not to be a relationship with the family. He added that if someone like a close friend or non-family member wants to have an accessory dwelling within someone's house, they could do it by going to the BZA for a special permit. He continued that in an ADU, anyone could live in that unit and the owner does not have to live in one or the other of the units under the proposed legislation that Councilor MacDougall referred to.

Mr. Luongo stated that if this measure does not pass, no in-laws will be built as in-law use was approved by an interpretation of zoning by the building inspector to allow ADU/in-law units. He added that this is why they tweaked the two definitions of accessory use and accessory dwelling.

Councilor MacDougal questioned the filing of an affidavit about family relationships and asked why even have the rule. He suggested calling it an in-law apartment, put a size restriction on it and that is it. He stated that he has a problem telling people who can live in their in-law apartments. He added that the language from other towns that was used was written 40 or more years ago; it is a different world now. He suggested replacing/removing that section and replace it with the "IRL is to provide temporary residence for designated family members, or designated companion of the owner." He stated that he did not want to have to get a special permit from the BZA to decide about relationships and who lives in his house.

Councilor Belmarsh asked for clarification on what sections he is looking to strike.

Councilor DiFazio stated that it would be section 3 regarding the size change from 600 to 800 square feet and section 8 which refers to occupancy by any person other than someone related by blood or marriage. He noted that in section 11, the word "spirit" was changed to "intent."

Chair DiFazio stated that he thinks that it is good that the person that lives in the house has to be the person who owns it. He continued that the question is how to regulate and verify who is going to reside in the attached in-law apartment.

Councilor DiFazio asked if the language is left the way it is, could they revisit the issue in six months or a year, to see how many people did come in with a request for a person who is not a relative. If people are complaining that they have to go to the BZA to get this for a friend or whoever it might be, to be able to live there, then it can be changed.

Councilor Abbot asked about how many applications, on an annual basis, come through for in-laws.

Mr. Luongo stated that he does not know because these do not come through the Planning Department.

Councilor Abbot stated that enforcement, regardless of the ultimate language, will be a challenge. He stated that it would behoove the town, especially given the way the state is going, to move towards a ban on short term rentals, at least in the R-1 residential neighborhoods. So that even if an in-law is built, and then enforcement is difficult, at least they can prevent residential neighborhoods from turning into Airbnb hotspots.

Mr. Luongo stated that under the definition of in-law, it states the in-law is to provide temporary residential living for persons who are related to the owner of the existing single family dwelling either by blood or marriage and the in-law does not turn the property into a two-family dwelling that can be rented. He added that if the town opens the door without going through a special permit allowing a friend to rent. now it's turned into a rental unit that will then be passed on as a rental

Councilor Belmarsh stated that she does not think any of this is necessary. She thinks that there are current parameters in place to protect R-1 districts from being overly built. She added that this is overly restrictive and suggested deleting the section that includes “relationship by blood or marriage.”

Councilor Belmarsh stated that she thinks that the Planning Department should work with the Building Inspector with regards to what those limits are in the interpretation and that would solve the issue.

Councilor DiFazio asked if they do something like that, then they are not regulating in-law apartments anymore.

Mr. Luongo stated that this is going into the ADU which is different than in-law apartments. He stated that they would have to rethink this ordinance because this is not an ADU ordinance. He explained what an ADU is and how it could change an R-1 district. He added that there is nothing in the zoning that governs in-laws which is what they are looking to regulate. He continued that what Councilor Belmarsh is talking about is an ADU which has different zoning.

Councilor Belmarsh asked when this needs to be voted on.

Councilor DiFazio stated that this measure has to be back to the full Town Council for a vote before December 31, 2023. If it is not voted on, nothing happens but then this measure cannot be brought up again for 2 years.

Mr. Luongo stated that the town does not have regulations on in-law apartments. The previous Building Inspector and the current Building Inspector have interpreted the zoning in such a way that in-laws were allowed. That is why they amended accessory building and accessory use. Accessory is not a living space; it is a swimming pool, a shed or the like. They had been interpreting it as an accessory building is a dwelling unit which it is not in the definition. He continued that if this does not pass, in-law apartments will not be granted.

Councilor Mathews made a motion for favorable action to the full Town Council on measure 23 120, to include the recommended changes from the Planning Board as well as the 800 square foot recommendation from Councilor MacDougall and Mr. Longo, and wording changes in section 3-b the word “hallways” is removed and in section 11, the word “spirit” is changed to “intent” –motion was seconded by Councilor MacDougall.

Councilor MacDougall made a substitute motion on what Councilor Mathews had made to include striking the language for blood relative and include language into the measure which changes the occupancy language to be that the “ILR is to provide temporary residence for designated family members or designated companion of the owner.”

Councilor Abbott seconded Councilor MacDougall’s substitute motion.

Mr. Luongo asked for clarification because he is not now sure if they should be calling this in-law residence, because it looks like it is more of an ADU. He noted that there will also be a need for changes to the definition section.

Mr. Schneider further clarified that if they were going with Councilor McDougall's language of companion, then they would want to strike going to the BZA for a special permit because everybody can be a companion. He asked what would trigger the need for a special permit.

Councilor Abbot stated that the intent is that having a non-companion or a non-close relationship would trigger the need for a special permit. He added that the idea that blood relative or by marriage is a definition of relationship is antiquated and there are relationships that people have that are much closer and more intimate. He stated that “in-law” is a common phrase to describe this type of apartment and is not used necessarily as a definition of the nature of the relationship.

Councilor Belmarsh stated that she agrees with Councilor Abbott. The in-law refers to the type of residence; it is not a separate apartment.

Councilor Mathews noted that if the suggested changes are made then the definitions portion they are referring to would need to coincide with the rest of the language just inserted in the substitute motion.

Solicitor MacLeod stated that the suggested changes are making this particular amendment ambiguous. He suggested that the Planning Department withdraw this without prejudice, in order to put together a proposed ordinance which addresses the definition of companion.

Councilor Abbot stated that the phrase blood is standing out and he is having an issue because of the idea that the town is setting up blood tests for who can and cannot live in someone's home.

Mr. Luongo stated that they are not doing blood tests; that “blood relation” is just a phrase.

Solicitor McLeod stated that the words family member or companion need to be defined in the definition section.

He added that the proposed changes would effectively eliminate the R-1 district because without proper definitions every single family residence could potentially build an 800 square foot addition and put something in there.

Councilor Mathews asked the Solicitor if he thinks he could address this in the next couple of weeks.

Solicitor McLeod stated that he has a lot going on with two major lawsuits pending against the town that he is defending in December.

Councilor MacDougall made a motion to withdraw his substitute motion which was seconded by Councilor Abbot.

Councilor Mathews made a motion to withdraw the original motion which was seconded by Councilor MacDougall.

Councilor Mathews stated that there is no motion on the table and the administration should go back, see if they can do something new, or consider the recommendation to withdraw.

There being no further business, Councilor Mathews moved to adjourn at 7:35 p.m. Councilor DiFazio seconded. The motion was UNANIMOUSLY VOTED.

Respectfully submitted by Janet P. Murray as recording secretary

Approved by Kenneth DiFazio as chair of the Ordinance Committee
Voted unanimously on 16 January 2024