



TOWN OF WINCHESTER
PLANNING BOARD MEETING
THURSDAY, SEPTEMBER 21, 2023 @ 1:00PM
REMOTE PARTICIPATION ONLY

Join by Zoom

<https://us02web.zoom.us/j/85294046636>

Meeting ID: 852 9404 6636

Phone: 1 646 558 8656

	BUSINESS
1:00 PM	Open Planning Board Meeting
1:05 PM	ADU Article Amendment
2:00 PM	Adjourn

	2023 MEETINGS
Tuesday Sep. 26	7:15 PM Planning Board Meeting, Remote Participation
Tuesday Oct. 10	7:15 PM Planning Board Meeting, Remote Participation



TOWN OF WINCHESTER

OFFICE OF THE
PLANNING DEPARTMENT



TOWN PLANNER
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September 20, 2023

PLANNER NOTES: PLANNING BOARD MEETING

ADU BYLAW SECTION 3.2.2(2) WARRANT ARTICLE

The Planning Board reviewed and changed the language of the ADU bylaw at the September 12, 2023, Planning Board meeting. This change was deemed necessary since a loophole in the MGL would mean that when a person with a disability (younger than 60) legally residing in an ADU in Winchester, turns 60, they will no longer be able to legally reside in that ADU and will have to move. They can return in two years, when they turn 62.

Since voting on the change, the Board has received several comments from the public expressing concerns about the approved September 12, 2023, article amendment. Those comments are supplied on the following pages 3-5.

BOARD APPROVED UPDATED AS OF SEPTMEBER 12, 2023

ARTICLE __: To see if the Town will vote to amend the preamble to Section 3.2.2(2) as follows

In all districts, ADUs may be constructed or established as a matter of right on a lot where a SINGLE FAMILY or DUPLEX dwelling exists or is allowed, provided that either the primary or accessory unit is used for the purpose of creating housing options for persons with disabilities, as defined under Massachusetts General Law, or where at least one of the persons in either unit is aged ~~62~~ 60 or older, provided the following conditions are met:

SUGGESTED BY COUNCIL PRIOR TO APPROVAL SEPTEMBER 12, 2023

ARTICLE __: To see if the Town will vote to amend the preamble to Section 3.2.2(2) as follows

*In all districts, ADUs may be constructed or established as a matter of right on a lot where a SINGLE FAMILY or DUPLEX dwelling exists or is allowed, provided that either the primary or accessory unit is used for the purpose of creating housing options, **in either the primary or accessory unit**, for persons*

with disabilities, as defined under Massachusetts General Law, or where at least one of the persons in either unit is aged ~~62~~ 60 or older, provided the following conditions are met:

PUBLIC COMMENTS

Brian Vernaglia

Dear Planning Board Members,

I watched your Town Meeting hearing on-line and I have two questions regarding the revised ADU Bylaw Warrant Article.

1. I appreciate the donut hole between 60 and 62 for disabled persons. Is there a cleaner way to, instead of lowering the age for all to 60, adding a clause with words such as “and persons aged 60 or 61 who would otherwise qualify as disabled under MGL XX excepting for their age”. I just worry that some town meeting members might see this as scope creep of the ADU article and if possible it would be great to keep all the original terms that passed town meeting and being able to say that nothing of substance has changed.

2. I don't think I also appreciated that someone under 18 is also not disabled per the law. What a strange law. Does that mean if someone hypothetically wanted to build an ADU for their adult able-bodied children and disabled grandchild, that would not be possible? I would have assumed they qualified but it would seem that they don't. Per my question 1, might it be easier to just have an even broader clause that says "and persons who would otherwise qualify as disabled under MGL XX excepting for their age".

Thank you for your service to the town!

Maura Sullivan

Dear Planning Board members:

I continue to be concerned about the Planning Board pursuing an amendment to the ADU bylaw based on a perceived hole in MGL. I had an exchange with Diab and Sally in July about this and I just watched the PB meeting from 9/12/23 where the proposed amendment was presented.

In short, as I mentioned to Diab and Sally, I do not believe the state cuts off “disability” at age 60 and I do not think we have a gap in our bylaw. I think our bylaw is fine as it is because it just references “MGL.”

I refer to the MA Attorney General’s definition of disability: <https://www.mass.gov/info-details/employment-rights-of-people-with-disabilities#:~:text=Individual%20with%20disability%20%2D%20defined,as%20having%20such%20an%20impairment.>

Individual with disability - defined

An individual with disability is someone:

1. with a mental or physical impairment that limits one or more major life activities; or
2. who has a history of such an impairment; or
3. who is perceived (even if erroneously) as having such an impairment.

There is no mention of age at all. And the MA Attorney General points to Chapter 151B, not Chapter 19C which the Planning Board is relying on.

Chapter 19C establishes a Disabled Persons Protection Commission and the definition stated in there applies only to that Chapter. Section 1 of Chapter 19C says, "**As used in this chapter...**".

There are other statutes within MGL which define disability differently. See

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123B/Section1?fbclid=IwAR0X6b72OL5PBCwXOVnV4sJ-Po3GCpoKBGyE2u8GFpyyN5lJldUyf5o3I3M>.

Then there are the fair housing laws and the federal ADA: <https://www.mass.gov/info-details/disability-rights-in-housing#who-is-considered-a-person-with-a-disability-under-fair-housing-laws?->.

So bottom line, I do not think we need to amend the ADU bylaw because I don’t think MA law would consider a 60 year old disabled person not disabled after their 60th birthday. They might not be protected by the Disabled Person Protection Commission but they would be by the Department of Elder Affairs (Chapter 19A). And kids under 18 with a disability are protected by DSS, etc.

I think we are safe relying on the MA Attorney General's definition which does not have any age parameters.

Thanks for your consideration.