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Falmouth Boards Consider Accessory Apartment Bylaw Changes

By BRAD COLE Aug 3, 2018

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Although Falmouth's planning board and zoning board of appeals agreed with the majority of changes proposed to the town's accessory apartment bylaw, a matter concerning septic systems was a sticking point at a joint meeting Tuesday night, July 31.

Section 3(f) of the existing bylaw states that developments subject to the water resource protection or coastal pond overlay districts may not have more than one bedroom per 10,000 square feet of lot area unless they are connected to the municipal sewer system or have access to an on-site septic system with enhanced nitrogen removal, which requires approval of the board of health.

That portion of the bylaw was rewritten by health agent Scott McGann, planning board member Patricia H. Kerfoot said. The update clarifies the requirements but does not change them.

"The intent is the same as before," Ms. Kerfoot said.

Zoning board member Gerald C. Potamis questioned the word "enhanced." He said this puts the board of health in an awkward position where they are required to approve enhanced nitrogen removal septic systems when town bylaws do not define what makes a system enhanced.

"The point is, we're requiring a standard that has not been defined yet," Mr. Potamis said, envisioning a scenario in which a homeowner might install one system, only for the town to require a better one.

Ms. Kerfoot added that if a homeowner is required to replace a septic system just to add an accessory apartment, it becomes prohibitively expensive to do so.

"We are defeating the intent of this bylaw," she said.

The intent of the accessory apartment bylaw is spelled out in the existing version, and that section remains unchanged in the proposed updated bylaw. Goals of the bylaw include broadening the range of housing choice in Falmouth, increasing the number of small dwelling units available for rent, encouraging a more diverse population and allowing seniors to "age in place."

Zoning Administrator Sari D. Budrow said the matter of septic tanks is best left to the board of health, as that is their area of expertise.

The boards decided to send the matter back to the accessory apartment temporary working group for another look, with the suggestion they omit the word "enhanced."

The application process was also up for consideration by the boards. Under the current bylaw, those building an accessory apartment unit within the existing single-family home or attached accessory building require planning board approval, while those building an accessory apartment in a detached structure require approval of the zoning board of appeals.

The working group asked the boards to consider having all accessory apartment applications be reviewed by one board.

Ms. Budrow said such a change could have an impact on several other bylaws, as many single-family homes in Falmouth have pre-existing nonconformities, meaning changes to those buildings are subject to review by the zoning board of appeals.

If the town were to have the planning board review all accessory apartment applications, it would need to further rewrite the accessory apartment bylaw to clarify this or update a number of older bylaws to note an exception for them.

Conversely, if all applications go to the zoning board, the board would potentially be reviewing applications where no changes are being made to a building's footprint.

"Any interior change is normally just a building permit, even within a pre-existing nonconformity," Ms. Budrow said.

"There is the option of keeping it exactly as it is," Ms. Kerfoot said, noting that if they changed how accessory apartments are reviewed, Town Meeting might not support the updated bylaw.

Those in attendance agreed.

"This discussion would drive Town Meeting batty," Mr. Potamis commented.

Planning board member John Druley noted that the accessory apartment bylaw is still fairly new, and the boards have only reviewed eight applications so far.

"I would like to see it stay the way it is for the applicants," Mr. Druley said, suggesting a five-year trial run to see how well the process works.

"After that, if it needs to be adjusted, it needs to be adjusted," he said.

He asked what would happen if Town Meeting did not approve the updated bylaw. Mr. Fox said the existing bylaw would remain in place.

"We're not going to lose it getting caught up in wording," Mr. Fox said.

The two boards agreed on other changes proposed by the accessory apartment temporary working group. These changes define the minimum lot size required for an accessory apartment unit at 7,500 square feet; clarify that either the principal or accessory unit can be rented out, but not both at the same time; define square feet as being measured using the exterior side of the exterior wall; and clarify that parking for the accessory apartment unit must be on site.

"Parking has to be on site," Ms. Kerfoot said. "If you don't have enough room for what you're doing, you shouldn't have it."

The update also expands upon what detached accessory structures can be used to house an accessory unit. The existing bylaw states garages and barns can be used, while the updated bylaw states all detached accessory structures can be used.

"We're limiting too much by saying garage or barn," Ms. Kerfoot said.

Committee members noted that carriage houses or sheds could hypothetically be used for accessory apartments under the updated bylaw.

“I think the way you have reworded it, especially the design portion of it, is helpful to the public,” Ms. Budrow said.