

**To:** Belmont, MA Planning Board Members  
**From:** Doug Koplow, TMM Precinct 6  
**Subject:** Review of draft 3A and ADU bylaw changes  
**Date:** January 25, 2025

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These comments are submitted as part of the Public Hearing related to bylaw revisions to be put before Belmont Town Meeting on March 3<sup>rd</sup>. They relate to proposed changes to Section 9 (Belmont's multi-family district under 3A) and Section 6 (the main section containing edits and additions related to the State's Accessory Dwelling Unit (ADU) mandate slated to take effect on February 2, 2025).

Detailed comments on the draft Section 6 ADU bylaw follow this summary. They are linked to specific sections of the bylaw, highlighting potential drafting issues and areas of policy concern.

## **I. Overview**

This has not been a normal term for the Planning Board. Major changes to town zoning rules that will affect the shape of Belmont for generations have come before you -- and will continue to come before you in the immediate future. The areas of town covered by the ADU bylaw are much larger than even 3A, which itself was major, and with the most recent drafts cover much or all of the town.

While earlier drafts of the ADU assumed applicability to all of our Single Residence districts plus General Residence, the draft now circulating has added language that appears to include, though the inclusion of variances, all zoning types in town. And while the last draft limited by-right ADUs to single family structures only, the current version seems to allow them on any sized multi-family as well.

These wide-reaching changes to zoning carry opportunities, but also major risks. All have placed significant demands on your time as town volunteers. I join many others in town thanking you for the immense amount of time you have given to the town to address the scope and scale of what has been before you.

To contain the potential downsides of these changes, it is critical for you to move carefully and deliberately. With such a wide range of impact, my hope is that you will err on the side of more transparency and more clarity on the implications and tradeoffs of the proposed language, and ensure they are clearly articulated in a manner accessible to residents and easy for them to understand.

The town's rules will not be approved any earlier than March 3<sup>rd</sup>, and thus will already lag the state ADU law slated to take effect on February 2<sup>nd</sup>. Belmont will be subject to state-promulgated ADU regulations for at least some time. Given that the town plans to be more lenient on ADUs than the state requires, using the state default will not create incremental

zoning risks to the town. Rather, rushing town language through with inadequate clarity on requirements or incomplete assessment of impacts seems a much larger risk.

I hope you will view the ADU changes as an incremental process to allow for learning and analysis. It is far better to ensure appropriate guardrails are in place on early versions of the zoning than to try to reign back what is allowed when problems and conflicts arise. The former approach will greatly reduce both friction between neighbors and litigation risk to the town.

## **II. Section 9 revision to rear setback from a minimum of 15' to only 6' in MOZ 5B subdistricts**

Belmont's MOZ 5B subdistricts allow the largest scale by-right buildings under our recently passed 3A zoning bylaw. The scale includes a 15,000 sf building footprint; 5.5 stories (which in most cases are six full stories or nearly so given small setbacks on a large building base, and also the waiver of any setback for any side of the building not abutting residential districts); and 65' high (again, in actuality more than 70' due to allowed cornice heights and roof-mounted structures and equipment). The allowed scale of these buildings was increased at the very end of the 3A process.

The proposed change to Section 9 will revert the rear setback to what exists in the base zoning – which is 6' for an LBI district.

There is presently a single 5B parcel in our 3A maps. This is in an LBI district and abuts a rail line. **For this parcel, a 6' rear setback is just fine.** However, it is important to remember that the base zoning of an LBI structure is also capped at two stories and 28', whereas an MOZ5B structure is more than twice as tall and 3x the stories. MOZ5B structures will obviously have more significant impacts on abutters than an LBI structure.

The town needs to include guardrails for these largest structures that reasonably anticipate and address the scale of the buildings on parcels not naturally buffered by features such as rail lines or conservation land. This is necessary to stay ahead of the highly likely expansion of 3A districts by the state. Simply relaxing contiguity requirements (since every town will already have a large developable 3A district already -- which was the purpose of this rule) and allowing adjacent parcels to be combined into existing 3A districts could quickly generate new areas of potential 5B conflicts.

The Director of Planning suggested that no guardrails be included until an actual 5B project was before the board. I see that as an unwise strategy, as that timing could expose the town to litigation risks and takings claims, which would be more challenging for the larger projects of the scale of an MOZ 5B development.

Further, more appropriate guardrails are easy to add now:

- The current proposed revision before TM adjusting the rear setback from 15' to 6' is fine given that it immediately applies to a parcel buffered by the rail line.

- The existing bylaw already requires a 20' rear setback if the building abuts a residential district.
- However, "Residential District" is defined narrowly under 3A and excludes many small scale structures that are also residential in nature and would be negatively affected by a 65-70' building only 6' from their lot line. Thus, the bylaw needs to be amended so that a 20' rear setback is also required adjacent to smaller structures outside of the 3A residential district definition. At the very least, this includes MOZ1A, MOZ1B, MOZ2 structures.

## **II. Accessory Dwelling Unit proposed zoning bylaw (Section 6) – Overview of Key Concerns**

**1) Proposal goes beyond state requirements and veers from the approach PB said it would follow.** The Planning Board has stated multiple times that it planned to pursue a minimum compliance approach on ADUs and revise incrementally over time as state regulations were finalized, analyzed, and challenging issues regarding small lot sizes in Belmont could be adequately evaluated.

In contrast, the proposed bylaw makes major changes in what is allowed in town, going well beyond what is required by the state law. The proposal now affects most parcels in town, with bylaw text developed on a much shorter time frame than 3A, and without the detailed evaluations of impacts, costs, benefits.

Neither the Board nor the bylaw drafters have specifically presented where they are exceeding state requirements; why they are confident these exceedances are justified and adequately vetted (including specific actions taken to analyze the impacts); and whether the same objectives could be achieved with more care and better information incrementally over time. Town Meeting members deserves to have that information.

**2) Inadequate review period.** Public hearings will not, even with the two week extension implemented at the last PB meeting, allow adequate review time for town proposals between the earliest time the state releases those regulations (January 31<sup>st</sup>) and the planned vote in Town Meeting on March 3<sup>rd</sup>. A narrow ADU bylaw to achieve minimum compliance would be feasible. However, the expansion to all districts, multi-family housing, and allowable increased density beyond what is allowed for the primary residence are problematic. And significant drafting issues appear to remain.

**3) "No action" in near-term is actually a viable option.** This approach would mean the state regulations become the town's rules as well for some months. There is very limited downside because the town's planned bylaw will not be (and cannot be) any more stringent regulating ADUs than the state, and there are no penalties for issuing town-specific adjustments to the state default rules at a late date. In contrast, putting forth language that has not been well vetted and may not even comply with what the state comes out with in the end can create problems in what gets built, challenges in any future modifications that reduce what can be

built, and generate conflict between neighbors due to some of the clauses Belmont is proposing.

#### 4) Selected issues with the proposed bylaw text (described in more detail in the Section 6 markup)

- **Short-term rental protections needed.** The state allows for significant town oversight of ADUs for short-term rentals. Belmont's bylaw does not carve out these protections but instead seems to include them as protected, by-right ADUs.
- **Setback and height requirements need tighter language.** Drafting issues create uncertainty on whether primary structure height and setback rules would actually apply. Conflicting rights to build detached ADUs only 5' from other structures creates significant risks of neighbor-to-neighbor conflicts and litigation.
- **Consistent rules needed for all ADU types.** Different rules for attached and detached ADUs are set forth in the current draft, and in situations where they don't seem to make sense.
- **Inclusion of new districts and housing types into by-right protected ADUs requires additional review and protective language.** Massive expansions of the applicability of the by-right ADUs occurred since earlier drafts, including most zoning districts in town via variances, and multi-family housing instead of just single-family units. The changes seem to have been inserted based on a suggestion by the town's attorney. However, given their expansive impact, they need to be further vetted – including via input from the Mass Municipal Association. In addition, should some of those other districts really have to be included, the current bylaw drafting does not appropriately and adequately limit where those expanded rights would apply.
- **A minimum compliance bylaw should not be modifying open space or lot coverage requirements at all.** PB meetings discussions frequently included mention of the challenges of small and non-compliant parcels. A sequential approach to the ADUs would create compliant zoning now and conduct further study on the challenging parcels to avoid conflict. That would also align with the stated approach the PB was going to follow. Instead, untested and perhaps unjustified, exceptions have been included in the base bylaw proposal to allow larger lot coverage and reduced open space.
- **Special permit issues.** Between versions, special permit provisions have shifted from non-conforming lots to non-conforming structures with no explanation; and are not addressing all ADUs on such lots though they should (indeed, which ADUs are covered has also shifted).
- **Historical property issues.** The delineation of what can and can't be required for ADUs on historical properties was unclear; some provisions seem to conflict with the by-right protected ADU requirements.

## **SECTION 6. SPECIAL REGULATIONS**

### **6.11 Historic Accessory Building Preservation**

*Note: §6.11 was adopted under Article 31 at the 2009 Annual Town Meeting.*

#### 6.11.1 Purpose

The purpose of this Section is to promote the preservation of unique Historic Accessory Buildings by permitting their adaptive reuse for uses that may not otherwise be permitted under this Zoning By-Law, thereby making their functional preservation and restoration feasible.

#### 6.11.2 Definition

A "Historic Accessory Building" is an accessory building such as a free-standing barn, greenhouse, or carriage house built before 1921, which is located on the same lot as the principal building to which it is accessory, and which is either:

- a) listed on the Inventory of the Historic and Archaeological Assets of the Commonwealth as maintained by the Massachusetts Historic Commission; or
- b) listed on the National Register or State Register of Historic Places; or
- c) specifically designated as a "Historic Accessory Building" by the Belmont Historic District Commission, using the criteria for evaluation established for determining eligibility for the National Register of Historic Places.

#### 6.11.3 Applicability

- a) The Planning Board may grant a Special Permit for the reuse of a Historic Accessory Building in any residential district of the Town, allowing the adaptation of such Building for use as a home occupation, or for one accessory dwelling unit.
- b) If the proposed reuse would be a Protected Use ADU as defined in Section 6.14.2, the reuse shall be governed by Section 6.14 instead of this Section 6.11.

*Note: §6.11.3 was amended by Article 32 at the 2009 Annual Town Meeting.*

#### 6.11.4 Procedure for Special Permit

- a) An Application for a Special Permit under this Section shall comply with the procedures and requirements set forth in Section 7.4 of this Zoning By-law, and the Planning Board's Special Permit Regulations.
- b) Upon receipt of an Application, the Planning Board shall forward a copy of the Application to the Historic District Commission for its review and recommendations concerning the proposed exterior treatments of the Building, including such things as windows, roofing and siding materials, and landscaping. Such recommendations shall include:
  - 1) the Commission's assessment as to whether the proposed reuse and associated exterior alterations would adversely affect the historic landscape or the architectural and historic integrity of the principal building or the Historic Accessory Building itself; and

- 2) specific conditions which the Commission believes should be imposed on the Special Permit in order to prevent any adverse effects.

The Historic District Commission shall hold a public hearing and make recommendations to the Planning Board within thirty-five (35) days of the Commission's receipt of the Application. Otherwise, the Application shall be deemed approved.

- c) The Planning Board may issue a Special Permit under this Section only if it finds that the proposed reuse and any related building alterations and site development meet all of the applicable Special Permit criteria set forth in Section 7.4.3, and
  - 1) are generally in harmony with the neighborhood;
  - 2) will neither generate excessive traffic, parking, noise or density impacts on the abutters, nor create other detrimental effects on the neighborhood;
  - 3) will preserve and/or restore the original architectural features of the Building to the maximum extent practicable;
  - 4) will not adversely affect the historic landscape or the architectural and historic integrity of the principal building or the Historic Accessory Building itself; and
  - 5) will not result in any enlargement or relocation of the Historic Accessory Building.
- d) If the Historic Accessory Building is proposed to be used for a home occupation, the Planning Board must also find that the following criteria are or will be met in addition to the criteria set forth in Section 6.11.4 c):

*Note: §6.11.4 d) was amended by Article 32 at the 2009 Annual Town Meeting.*

- 1) There will be no exterior display or visible storage of supplies or equipment to be used on or off the premises, or other variation from the residential character of the premises;
- 2) Not more than one person who is not a member of the household will be employed on the premises;
- 3) There will be no production of offensive noise, vibration, odors, fumes, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects;
- 4) No articles will be sold or offered for sale on the premises;
- 5) Traffic generated, including pick up and deliveries, will not exceed that normally expected in the residential neighborhood in which the Historic Accessory Building is located; and
- 6) All parking will be provided on-site, and not within a required front yard.

- e) If the Historic Accessory Building is proposed to be used for an accessory dwelling unit, the Planning Board must also find that the following criteria are or will be met in addition to the criteria set forth in Section 6.11.4 c):
  - 1) The accessory dwelling unit use will be incidental to the ownership and use of the principal structure on the same lot; and
  - 2) The accessory dwelling unit or the principal structure will be occupied by the owner of the subject premises, except for bona fide temporary absences.

*Note: §6.11.4 e) was amended by Article 32 at the 2009 Annual Town Meeting.*

#### 6.11.5 Conditions of Approval

In granting a Special Permit under this Section, the Planning Board shall require that a perpetual preservation restriction on said Building and its landscape context be granted to the Town or other appropriate body or preservation organization under the provisions of Massachusetts General Laws, Chapter 184, Section 31. The form of such preservation restriction shall be subject to review and approval by Town Counsel.

In addition, the Planning Board may impose such other conditions, safeguards and limitations on time or use that it determines to be appropriate to assure compliance with the applicable criteria set forth in Section 6.11.4 including, but not limited to conditions:

- a) prohibiting the Special Permit from being transferred to a subsequent owner without the approval of the Planning Board;
- b) specifying the required number of on-site parking spaces and their location;
- c) limiting the business operations of a home occupation, such as the number of patrons/clients visiting the premises, hours of operations, and hours and location of deliveries;
- d) requiring installation of additional landscaping;
- e) requiring continuing maintenance of landscaping;
- f) requiring a restrictive covenant to be imposed on the subject property, prohibiting the division or reduction in size of the lot on which the Historic Accessory Building is located.

#### 6.11.6 Nonconforming Historic Accessory Buildings

Any exterior or interior alteration to a preexisting nonconforming Historic Accessory Building made pursuant to a Special Permit issued under this Section shall be deemed not to constitute an "alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent" requiring consideration and a Special Permit by the Board of Appeals under Section 1.5.3.

6.11.7 Compliance with Applicable By-Laws

Except as expressly provided in this Section, the grant of a Special Permit for the reuse of a Historic Accessory Building shall not relieve the applicant from the need to comply with all other applicable Town By-laws and Regulations.

**Text** Some text may be change-tracked subject to further discussion by the Planning Board.

Highlighted text also indicates an issue for further Planning Board discussion.

There also may be comments in the margin to elicit further discussion.

## 6.14 Accessory Dwelling Units

*Note: §6.14 was adopted under Article at the 2025 Special Town Meeting on February 10, 2025.*

### 6.14.1 Purpose

This section governing accessory dwelling units (“ADUs”) is intended to:

- a) Increase the number of small dwelling units available in the Town;
- b) Increase the range of choice of housing accommodations to meet the needs of households;
- c) Increase the supply of housing and the diversity of housing options;

### 6.14.2 Definitions

In this § 6.14, the following terms shall have the following meanings, unless a contrary meaning is required by the context or is specifically prescribed.

- a) Allowable Building Envelope – For the purpose of this section, Allowable Building Envelope shall mean the lot area inside of the building setbacks.
- b) Bus Station – A location serving as a point of embarkation for any bus operated by a Transit Authority. For routes that allow flag stop locations where passengers may signal for a bus to stop at any point along its designated route, the entire route shall be considered a Bus Station.
- c) Commuter Rail Station – Any commuter rail station operated by a Transit Authority with year-round service with trains departing at regular time intervals, rather than intermittent, seasonal, or event-based service.
- d) Historic Building – (a) Any building or structure individually listed on the National Register of Historic Places; (b) any building or structure evaluated by MHC to be a contributing building within a National Register or State Register District; (c) any building or structure which has been certified by the Massachusetts Historical Commission to meet eligibility requirements for individual listing on the National Register of Historic Places; (d) any building in a locally designed historic district, locally designed historic building or structure, and building on a locally designated demolition delay list, or Historic Accessory Structure. Historic building shall be further defined as a house museum or preserved buildings. All entries into the house museum list shall be certified by the Massachusetts Historical Commission. The Board of Building Regulations and Standards shall ratify all buildings or structures certified by the Massachusetts Historical Commission to qualify for house museum listing (see Appendix 780 CMR 120.Y).
- e) Historic District – A district established pursuant to M.G.L. c. 40C or other state law that is characterized by the historic or architectural significance of buildings, structures, and sites, and in which exterior changes to and the construction of buildings and structures are subject to regulations adopted pursuant to M.G.L. c. 40C or other state law, as the case may be.
- f) Modular Dwelling Unit – A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used as a Dwelling Unit, transportable in one or more

**Commented [DK1]:** You previously adopted the convention of capitalizing defined terms when you used them in the zoning bylaw text. This is an important term, newly defined (with the definition located in a different section of the zoning), so should be flagged using your capitalization convention.

**Commented [DK2]:** Uses of this term in the earlier versions of the bylaws were edited out. It seems like you can therefore remove it from the definitions.

**Commented [DK3]:** This text is confusing. It seems to allow manufactured homes in the description, but then excludes those under MA c140 s32q. Yet the text of that part of the MA statute seems to allow manufactured homes. I know the definition is carried forward from the state draft regs, but still not clear what it is doing. What is actually being excluded? Can that be described more clearly?

sections and affixed to a foundation and connected to external utilities. A Modular Dwelling Unit shall not include a manufactured home, such as those defined under M.G.L. c. 140, s. 32Q.

- g) Protected Use ADU – An attached or detached ADU located on a Lot in a Single-Family Residential Zoning District without any other ADU.
- h) Single-Family Residential Zoning District – Any Zoning District where Single-Family Residential Dwellings are a permitted or an allowable use, including any Zoning District where Single-Family Residential Dwellings are allowed as of right, by special permit, variance, waiver, or other zoning relief or discretionary zoning approval.
- i) Subway Station – Any of the stops along the Massachusetts Bay Transportation Authority Red Line, Green Line, Orange Line, Silver Line, or Blue Line, including any extensions or additions to such lines.
- j) Transit Authority – The Massachusetts Bay Transportation Authority established by M.G.L. c. 161A, s. 2 or other local or regional transit authority established pursuant to M.G.L. c. 161B, s. 3 or M.G.L. c. 161B, s. 14.
- k) Transit Station – A Subway Station, Commuter Rail Station, or Bus Station.

#### 6.14.3 General Requirements

Up to one ADU is permitted by right in accordance with § 3.3 as an accessory use to another dwelling unit subject to the following:

- a) A detached ADU must have a permanent foundation.
- b) The ADU shall not be required to be served by any separate utility meter. Electricity, water, oil, heat, gas, and sanitary sewer may be provided by a single service to both the ADU and the principal dwelling.

#### 6.14.4 Prohibitions

- a) The ADU may not be sold or title transferred separate and apart from the principal dwelling to which it is an accessory use. The principal dwelling and the accessory dwelling unit shall remain in common/single ownership and shall not be severed in ownership.

#### 6.14.5 Dimensional Requirements

- a) A Protected Use ADU may is not be larger in Gross Floor Area than 1/2 the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller.
- b) The proposed ADU shall be subject to the height and setback requirements applicable to the structure in which the principal dwelling unit is located.
- c) No ADU shall be sited closer to the front lot line than the primary structure.
- d) Any new detached ADU, any ADU created by adding Gross Floor Area to a Single-Family Dwelling, or any ADU created by adding Gross Floor Area to an existing detached Accessory Building or structure shall be in accordance with the open space and building coverage requirements as established by Table 1 below. Proposals seeking to exceed Maximum Lot Coverage or Minimum Open Space may seek a Special Permit from the Planning Board.

**Commented [DK4]:** That state explicitly segregates short-term use ADUs and allows them to be controlled even in how it defines an ADU. Your proposed language does not seem to address them at all. It should. Otherwise, the text would allow short-term rental of ADUs as a protected ADU with by-right construction. Since both units (the primary and the ADU) can be owned by third parties and leased (the only restriction that they both be owned by the same non-resident party), this gap seems a large potential problem.

While in theory short-term rentals are prohibited in town, go on any rental platform and you will see there are tons of them here. You should not create an protected class of short-term rental ADUs when it ... [1]

**Commented [DK5]:** As with the 3A bylaw language, identical terms should be incorporated into this section by reference to other parts of the zoning. If this section is defining the same term differently (which can create a morass), it does need to be listed and defined ... [2]

**Commented [DK6]:** Town Counsel noted in an earlier draft that the current definition would likely include every single parcel in town because the bylaws allow variances in some circumstances everywhere. ... [3]

**Commented [DK7]:** If the structure is attached, but accessory next to the existing structure, do other bylaws stipulate it needs a permanent foundation as well? It seems like any ADU should have a permanent foundation given the frost issues. Not clear why th ... [4]

**Commented [DK8]:** Would this mean that the principal owner needs to pay for it all as part of protecting tenant's rights?

The lack of separate metering does tend to drive t ... [5]

**Commented [DK9]:** On what basis are you deleting the text from earlier versions that limited ADUs from being added by-right to multifamily units? The original text read: ... [6]

**Commented [DK10]:** I understand the intent of this language, but where large economic returns exist for workarounds, a higher level of assessment is needed to identify what they might be and to ensure they are adequately blocked in the text. ... [7]

**Commented [DK11]:** Because of how this is worded, if an ADU is not "in" the principle dwelling unit, it seems as though it is not subject to the height or setback requirements for that lot generally. This seems like a potential drafting error, rather than an intent for th ... [8]

**Commented [DK12]:** But closer on the sides and back is fine?

**Commented [DK13]:** These proposals, which will allow larger footprints and less open space often on very small parcels, have not been vetted or modeled, and should not be included in this version of your ADU bylaw. I recall there was some discussion of a few ... [9]

Table 1 - ADU Dimensional Requirements

<u>1 - Zoning District</u>	<u>2 - Max. ADU Size</u>	<u>3 - Max Lot Coverage*</u>	<u>4 - Min. Open Space*</u>
<u>Single Residence A</u>	<u>½ GFA of Principal Dwelling</u>	<u>25%</u>	<u>40%</u>
<u>Single Residence B</u>	<u>See a. above</u>	<u>32.5%</u>	<u>35%</u>
<u>Single Residence C</u>	<u>See a. above</u>	<u>32.5%</u>	<u>35%</u>
<u>Single Residence D</u>	<u>½ GFA of Principal Dwelling</u>	<u>25%</u>	<u>40%</u>
<u>General Residence</u>	<u>See a. above</u>	<u>40%</u>	<u>20%</u>

\* Maximum Lot Coverage includes the coverage requirement under Section 4.2.1 plus a fixed additional percentage, as applicable and as provided in column 3 above. Correspondingly, Minimum Open Space has been reduced by the proportional amount of land area allowed as additional Maximum Lot Coverage.

**6.14.6 Parking Requirements**

- a) One (1) additional parking space shall be required for an accessory dwelling unit unless the property is located within 0.5 miles from a Transit Station, in which case no additional parking space is required.
- b) If there are multiple driveway openings serving different dwelling units on the lot, the ADU may use any of those driveway openings. Otherwise, ADUs shall use the same driveway opening and curb cut as the principal dwelling.
- c) Any parking spaces shall conform to Section 5.1.3(b) and shall be constructed of material consistent with the existing driveway. Except that permeable pavers or asphalt may be utilized for a secondary driveway intended to serve the ADU.

**6.14.6 Design Requirements**

- a) A detached ADU shall be no less than 5' from other structures.
- b) A detached ADU shall not be located between a roadway and the Principal Dwelling.
- c) When an ADU has a separate exterior entrance from the Principal Dwelling, the ADU's entrance shall not be located on the same building façade as the entrance to the Principal Dwelling.
- d) An exterior staircase serving an ADU may not be visible from the public way and must be fully enclosed.
- e) When an ADU has a separate exterior entrance from the Principal Dwelling or is a separate Building, the ADU shall be accessible by path or walkway.
- f) The ADU shall be located on the Lot so as not to impede vehicular access to and circulation on the Lot, roadways, or sidewalks.
- g) ADUs located in a historic district, proposed in a historic building that requires exterior renovations or additions, or located in a Historic Accessory Building, shall require a Certificate of Appropriateness from the Historic District Commission in addition to any Design and Site Plan Review applicability that may be required as per Section 6.14.7 below.

**6.14.7 Application**

The application for a building permit and/or occupancy permit for an ADU or an application for a special permit for an ADU shall include the following:

- a) A plot plan of the principal dwelling unit with square footage, proposed accessory dwelling unit with square footage, showing the location of all existing and proposed buildings on the lot,

**Commented [DK14]:** First, this allowance is not required by state law, potentially of large impact to Belmont residents, and has not been properly evaluated.

If the language requiring ADUs to following the parcel height and setback requirements (6.14.5 (b)) is fixed, this provision becomes less of an issue. Absent that tightening, however, this language is unacceptable for a slew of reasons:

1)It converts side setbacks in residential districts from 10-15' on the sides to 5'; and from 20-40' (when abutting residential) in the back to 5'.

1)Because you have defined the distance as 5' from structures rather than the property line, any gaps in the applicability of the setback language in 6.14.5(b) would mean detached ADUs can go up to the lot line (with the 5' minimum distance from other structures being met through the setbacks in the neighboring property).

1)A detached ADU within an existing outbuilding like a garage could also be right next to the property line or up to it, by right.

What specific use case are you trying to address here?

**Commented [DK15]:** I'm assuming that this counts as part of the building footprint and lot coverage, and is not permitted to encroach into a side or rear setback like bay windows, decks, and porches could do in the 3A bylaw. If this is not the case, that needs to be explicitly stated in your summary documents, as the exclusions will generate distorted incentives on egress location that will worsen conflict with abutters.

**Commented [DK16]:** Wouldn't this conflict with all of the exceptions laid out earlier on historic accessory buildings? If the town's position is that the rules here are the same as those applied to any historic structure, then some of the text earlier on should probably be revised. At present, I'm not clear what is and is not required or allowed for ADUs co-located with historic structures.

- zoning matrix and required parking.
- b) A certified plot plan, stamped by a professional land surveyor registered in the State of Massachusetts.
  - c) When the creation of an ADU requires the alteration of the exterior of a structure, the application shall include elevation plans showing the sides of the building affected by the construction both prior to and after completion of construction.
  - d) Design and Site Plan Review shall be required for any ADU that meets the following criteria:
    - 1) The construction of the ADU exceeds the height of the principal dwelling, regardless of whether the height of the principal dwelling is the maximum permitted on the lot.
    - 2) A two-story accessory building or adds a second story to an existing accessory building;
    - 3) Increases the lot coverage beyond the maximum in Section 4.2.1, without the additional percentages Not more restrictive provided in Section 6.14.5;
    - 4) Decreases the open space below the minimum in Section 4.2.1, without the 10% reduction provided in Section 6.14.5;
    - 5) Where any additional development of a particular lot is subject to the provisions of Section 1.5.4 of this By-Law but in compliance with Table 1 above; or
    - 6) A pre-existing building is being converted or added to accommodate the ADU that does not meet any of the dimensional requirements.

#### 6.14.8 Other Circumstances Requiring Special Permit

In the following circumstances, developing an ADU requires a Special Permit from the Board of Appeals:

- a) An ADU within an existing nonconforming structure that adds to the particular non-conformity other than increases to maximum lot coverage or decreases to minimum open space as provided in Table 1 above.
- b) A Special Permit for an ADU may only be granted upon a finding that the construction and occupancy of the accessory dwelling unit will not be detrimental to the neighborhood in which the subject property is located and after consideration of the factors set forth in this ordinance.

#### 6.14.9 Decision

- a) A building permit for an ADU may be granted by the Inspector of Buildings, or his designee, upon determination that all criteria as set forth in this ordinance have been satisfied except where Design and Site Plan Review or a Special Permit may be required, in which case, the Inspector of Buildings may only issue such permit approval based on Special Permit and/or DSPR approval.

#### 6.14.10 Accessory Dwelling Units in Existence Before Adoption of By-Law

The purpose of this section is to ensure that accessory dwelling units or conversions in existence before the adoption of this By-Law are in compliance with the State Building Code.

- a) A legally conforming dwelling unit that would be considered an ADU under this By-Law that was granted by Special Permit (formerly "Historic Accessory Building ADU") may be certified and continue as an ADU under this section.
- b) Any other pre-existing dwelling unit that would be considered a Protected Use ADU under this ordinance, including pre-existing non-conforming units, must become certified and may be subject to inspections and require renovations to ensure compliance with building, fire and sanitary code.

#### 6.14.11 Registration and Certification

All new or pre-existing ADUs must be registered with the Office of Planning and Building as follows:

**Commented [DK17]:** Is this a binding DSPR like in the base zoning, or a recommendations-only DSPR like under 3A? And while I hope it is the former, wouldn't subsections 3) and 4) violate the protected ADU by-right requirement because the exceptions have been added to the base rules for ADUs, and then subjected to additional review?

Different wording where you retain existing open space and lot coverage rules in the default then allow small exceedances based on special permits could work better.

**Efforts to expand the by right scale for protected ADUs can always be considered by the town, but should be done at a later town meeting to ensure proper analysis and clear state guidance.**

**Commented [DK18]:** Your original bylaw text in this section was focused on a *detached* ADU on a non-conforming LOT. You are now ignoring the *lot* entirely, and focusing on just the *structure*. Further, you have flipped the focus from detached units to ADUs *WITHIN* a nonconforming structure. What is going on here? Why are these shifts happening? And regardless, neither the prior nor the current wording seems adequate.

- 1) Non-conforming lots and structures are both complicated, and Belmont has done zero real analysis of the impacts of your proposed ADU changes in these situations.
- 2) There is no logical reason to have different rules for detached and attached units. Your rules should address common problems on all of these non-conforming areas.
- 3) The argument that because Belmont has so many non-conformities you need to put in the language to allow ADUs now is unconvincing and short-sighted. The appropriate strategy is to see what the state final rules look like, how many ADUs are being proposed in town and where constraints are arising, and then refine the zoning to address common problems in an incremental and thought-throu... [10]

**Commented [DK19]:** A comment on an earlier draft by a PB member indicated that the state was re-examining special permits for non-conforming lots since ADUs were supposed to be by right.

My reading of the state draft regs is that a protected ADU meets state requirements so long as the ADU faces the *same rules* as would apply to the primary residence. In these cases, non-conforming primary residences have a specific process they need to go through, and submitting ADUs to that same process seems both fair and prudent. I think state implementation of a blanket exemption from enhanced review and permitting of expansions on non-conforming lots would be unfortunate.

As a town policy matter, this is complicated and there is no benefit for Belmont to come out with exemptions and expansions on ADUs on non-conforming lots at this point in time. We need to see what the state ... [11]

- a) Newly developed ADUs must keep a registration on file with the Office of Planning and Building and renew the registration every five (5) years.
- b) Pre-existing ADUs that seek to become certified by filing an application for Pre-Existing ADU Certification with the Office of Planning and Building where they will initially be inspected to ensure compliance with building, fire, and sanitary codes. Once certified, such units shall automatically be registered and must renew registration every five (5) years thereafter.
- c) ADU certification shall be made by the Inspector of Buildings or their designee.

6.14.12 Enforcement

It shall be the duty of the Inspector of Buildings to administer and enforce the provisions of this section.

**Page 6: [1] Commented [DK4] Doug Koplow 1/24/2025 12:33:00 PM**

That state explicitly segregates short-term use ADUs and allows them to be controlled even in how it defines an ADU. Your proposed language does not seem to address them at all. It should. Otherwise, the text would allow short-term rental of ADUs as a protected ADU with by-right construction. Since both units (the primary and the ADU) can be owned by third parties and leased (the only restriction that they both be owned by the same non-resident party), this gap seems a large potential problem.

While in theory short-term rentals are prohibited in town, go on any rental platform and you will see there are tons of them here. You should not create a protected class of short-term rental ADUs when it is not required by the state regulation.

**Page 6: [2] Commented [DK5] Doug Koplow 1/24/2025 1:01:00 PM**

As with the 3A bylaw language, identical terms should be incorporated into this section by reference to other parts of the zoning. If this section is defining the same term differently (which can create a morass), it does need to be listed and defined separately. But part of the minimum disclosure for residents and Town Meeting on these proposed revisions is for staff to clearly flag those dual definitions in your proposals and explain why the original one wouldn't suffice for this section as well.

The definition being used here is hugely expansive. Because it incorporates so much of the town, even though you have an opinion from a single attorney that it needs to be this expansive, it is incumbent on the Board to proceed cautiously including getting additional opinions (including from the Mass Municipal Association); avoid including items that may not show up in the final state regs; and consider language to provide at least guardrails. One important guardrail is in my next comment.

**Page 6: [3] Commented [DK6] Doug Koplow 1/24/2025 1:03:00 PM**

Town Counsel noted in an earlier draft that the current definition would likely include every single parcel in town because the bylaws allow variances in some circumstances everywhere.

The bylaw language needs to be tightened to make it clear throughout that the only protected ADU within DISTRICTS that sometimes allow single family residences (e.g., with a special permit or variance) is one that is associated with an existing residential building. The bylaw needs to be clear that a property owner can't stick it on other types of structures in those zones by right. This approach would be in full compliance with the ADU mandate because ADUs are not being subjected to oversight that is more stringent than what applies to the primary structure.

This example underscores why Belmont should not issue bylaw changes ahead of the state rules. Any time the town puts in language that is more advantageous to property owners, it may incite rapid (and irreversible) actions by owners to capitalize on the development window, or trigger challenges when the town tries to reduce what is allowable by parties claiming financial losses. These types of mistakes are far more likely when changes are rushed through.

**Page 6: [4] Commented [DK7] Doug Koplow 1/24/2025 1:07:00 PM**

If the structure is attached, but accessory next to the existing structure, do other bylaws stipulate it needs a permanent foundation as well? It seems like any ADU should have a permanent foundation given the frost issues. Not clear why there is a distinction being made here between detached and other ADUs.

**Page 6: [5] Commented [DK8] Doug Koplow 1/24/2025 1:08:00 PM**

Would this mean that the principal owner needs to pay for it all as part of protecting tenant's rights?

The lack of separate metering does tend to drive up consumption levels (I've done analysis of this in the past looking at water consumption in multifamily housing), though sharing existing infrastructure would reduce the incremental cost to add an ADU as this provision is intended to do.

**Page 6: [6] Commented [DK9] Doug Koplow 1/24/2025 1:10:00 PM**

On what basis are you deleting the text from earlier versions that limited ADUs from being added by-right

to multifamily units? The original text read:

“a) ADU’s are not permitted on any lot or any structure that contains two (2) or more primary dwelling units.”

This is a huge change and effectively allows any 2-family to be a 3-family; a 3-family to become a 4, and so on. It also means that your 3A compliance numbers are even more understated than they were before because unit-limited subdistricts can now have basement units by right given the interaction of the 3A and ADU bylaws. It adds to the underestimation errors on your fiscal cost assessments also – which are already likely huge due to the obvious problems with how RKG treated the educational costs shifted into shared services.

**Page 6: [7] Commented [DK10] Doug Koplow 1/24/2025 1:14:00 PM**

I understand the intent of this language, but where large economic returns exist for workarounds, a higher level of assessment is needed to identify what they might be and to ensure they are adequately blocked in the text.

In this case, Town Counsel needs to confirm in writing that they have thought about potential workarounds by property owners, and confirmed they are all blocked by this (or replacement) bylaw language.

That language needs to prevent *de facto* separated property rights. A potential example could be an unchanging parcel-specific LLC where there are fractional owners that can be modified over time in such a manner that has the effect of creating differentiated ownership and property rights via the LLC operating agreement.

Clearly under any scenario, homes can still be owned in corporate structures, still have multiple owners, and still modify the ownership of the corporate parent at will and without public filings. So the concern about workarounds is not an idle one.

**Page 6: [8] Commented [DK11] Doug Koplow 1/24/2025 4:05:00 PM**

Because of how this is worded, if an ADU is not “in” the principle dwelling unit, it seems as though it is not subject to the height or setback requirements for that lot generally. This seems like a potential drafting error, rather than an intent for the height and setback to apply only in some ADUs. In which case, the text should be worded something like “The proposed ADU shall be subject to the height and setback requirements applicable to the parcel on which the principal dwelling unit is located.” If my rewording has other problems, the key elements of a functional revision is to make it clear that all of the potential ADU classes (attached, interior, detached, or on top of accessory buildings) are subject to these same constraints.

If your intent is actually to allow more relaxed requirements on exterior ADUs, you have a responsibility to disclose that impact of your proposal and justify why you believe it is best for the town. This transparency angle has been a common theme on all of my comments on the draft zoning language.

**Page 6: [9] Commented [DK13] Doug Koplow 1/24/2025 1:17:00 PM**

These proposals, which will allow larger footprints and less open space often on very small parcels, have not been vetted or modeled, and should not be included in this version of your ADU bylaw. I recall there was some discussion of a few examples. Those are helpful, but should still not result in fast-tracking this complex issue, particularly since the example imaging done for the 3A structures were inaccurate in material respects.

Because the town has so many small lots these changes can create problems for abutters. It is not the role of the Town or the Planning Board to make ADUs easy for all potential landowners in the first go. Rather, it is to balance the mandates of the state, town objectives, and the rights and concerns of abutting property owners and neighborhoods. That role argues for a thoughtful and incremental approach to zoning adjustments as you have more data. Further, from the perspective of legal exposure to the town, it

is much easier to relax regulations in the future than to reign in requirements again because problems you didn't think of during this very short time window you had to develop ADU zoning start to pop up.

The linkage between lot coverage and open space reductions is mentioned but not illustrated quantitatively. It will be helpful if you can show the formulas and their logical basis.

**Page 8: [10] Commented [DK18]**

**Doug Koplow**

**1/24/2025 1:31:00 PM**

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**Page 8: [11] Commented [DK19]**

**Doug Koplow**

**1/24/2025 1:34:00 PM**

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As a town policy matter, this is complicated and there is no benefit for Belmont to come out with exemptions and expansions on ADUs on non-conforming lots at this point in time. We need to see what the state does, evaluate the types of non-conformities where new structures would be most challenging on neighbors and the neighborhood, and craft revisions carefully. It may be that some non-conformities can be relaxed with few or no negative impacts, while other have significant impacts and should remain under a special permit process.

Town Meetings convenes every six months, and there are zoning bylaw revisions at almost every meeting. Doing ADUs incrementally fits in perfectly well with that process.