

**To:** Belmont, MA Planning Board Members  
**From:** Doug Koplow, TMM Precinct 6  
**Subject:** Review of January 31, 2025 bylaw revision drafts  
**Date:** February 4, 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 the January 31<sup>st</sup> draft of proposed changes in the town's zoning bylaws to address the State's Accessory Dwelling Unit (ADU) mandate, and revisions to Belmont's 3A bylaw. A summary of main themes is below; context-specific comments to Section 6 (the main ADU bylaw) follow.

1) The January 31, 2025 draft includes significant improvements from the earlier version. Thank you for your time and attention to comments that I and others submitted on the last draft.

2) Section 1: As town counsel noted, "Accessory Structures" is not a defined term. Given revisions that are slated to increase allowed lot coverage and reduce open space, it is important that definitional changes not compound the problem by excluding features from your tabulation of lot coverage even though they are reducing open space.

3) Section 9: My last round of comments requested you put guardrails on MOZ5B structures (65 to 70' high) so if they are slated in the future to go next to parcels zoned for much smaller structures they would have more than a 6' rear setback. This request was unfortunately ignored in the latest version of this section.

If the Board is focused on loosening standards in anticipation of problems (as you are doing with lot coverage and open space), you should equally anticipate areas of concentrated negative effects to address in your proposed revisions.

4) Section 6 ADUs:

- There are definitional issues on "short-term rental" and "transit adjacent lot".
- The state final regs added explicit reference to the "Dover Amendment". The reasons and implications need to be evaluated, as it may further reduce town latitude to apply reasonable constraints to specific activities. If the impacts are significant, Belmont should raise the issue with the MA Municipal Association.
- The bylaw includes zoning districts where single family residences are allowed by special permit as eligible for protected ADUs (e.g., the LB districts). By-right protected ADUs should apply only to existing residential structures in those districts, not to all lots. I do not see language in the current draft that protects the town in this way.
- You removed a requirement for foundations, though these are required by the state even for modular construction units. If required by other parts of our zoning so mention is not needed in Section 6, that should be made clear; else the requirement for foundations should be reinstated.

- Text to protect existing setbacks and distance from the front lot line is not always clear; see specific context-linked comments below.
- Particularly given vague terms in the final regulations that seem to open the towns to a variety of litigation from parcel owners, I continue to believe that expanded property rights via increased lot coverage and reduced open space should not be done in the first iteration of this zoning rule. It is not mandated, not subject to time deadlines, and can be done once we have more information on how the baseline rules are working on the ground. Concerns over people gaming the exemptions were raised at the last meeting but dismissed by other members of the Board. This is an important issue, and the reasons stated for dismissing the concern didn't seem adequate. More on this in my detailed comments as well.

## **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;
- d) To ensure compliance amend this By-law to comply with the portions of Chapter 150 of the Acts of 2024 applicable to Accessory Dwelling Units ADUs.

#### 6.14.2 Definitions

In this §6.14, the following terms shall have the following meanings and a capitalized term shall have the meaning in § 1.1, unless a contrary meaning is required by the context.

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- a) Accessory 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 sections and affixed to a foundation and connected to external utilities.
- b) Building Code - The Massachusetts State Building Code, 780 CMR.
- c) Bus Station - A location serving as a point of embarkation for any bus operated by a Transit Authority.
- d) 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.
- e) Fire Code - The Massachusetts State Fire Code, 527 CMR 1.00.
- f) Historic Building - Any Building on a lot governed by §60-320 of the General Bylaws.
- g) 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.
- h) 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 sections and affixed to a foundation and connected to external utilities.
- i) Protected Use ADU - An attached or detached ADU located that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District and is protected by M.G.L. c. 40A, §3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU

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that is non-conforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition.

i) **Short-Term Rental** – Short-Term Rental, as defined in M.G.L. c. 64G, § 1.

ii) **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 or by Special Permit.

iii) **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.

iv) **Transit-Adjacent Lot Area** – Any Lot, any portion of which is area within a the 0.5-mile straight line from the center of a Transit Station, radius around a Transit Station. Note that the 0.5-mile distance shall be measured as a straight line from the center of the Transit Station to the closest edge of the ADU.

v) **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, § 3 or M.G.L., c. 161B, § 14.

vi) **Transit Station** – A Subway Station, Commuter Rail Station, or Bus Station.

6.14.3 General Requirements

Only one ADU is permitted by right in accordance with § 3.3 as an accessory use to another Dwelling Unit subject to the following:

a) **ADU shall not be required to be served by any separate utility meter.**

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 provided that a separate connection may be required by a Municipal or regional utility, investor-owned utility, by state law, by a local, regional, or state board or commission, or by court order.**

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 ADU shall remain in common/single ownership and shall not be severed in ownership.**

b) **Short-term rentals, as defined in Section 6.14.2 above, are prohibited in both the ADUs.**

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 ADUs shall be subject to the height and Setback requirements applicable to the Structure in which the principal Dwelling Unit is located.**

c) **Unless located within a pre-existing structure, No ADU shall be sited closer to the front lot line than the Principal Dwelling Unit.**

**Commented [DK1]:** The state definition is below. It has no info I can discern on the duration of lease. How would the state definition not also apply to a furnished long-term lease?

Another issue is that there are likely ways to bypass the "reserved in advance" clause, which, if bypassed, would open up all sorts of rental options on the ADUs.

The text of the state definition: "Short-term rental" ... [1]

**Commented [DK2]:** Definition incorporates the state's revised definition well (which eliminated districts where a single family could be built by a variance, etc.)

However, I am still not clear on how you are limiting ... [2]

**Commented [DK3]:** What counts as a "lot" in this definition? Is this simply a bureaucratic way of saying "your driveway" or are you opening it up to all sorts of theoretical additional ways to avoid adding on-site parking? ... [3]

**Commented [DK4]:** The state regs say that even modular units need to be attached to a foundation. It is important that any ADU have a proper foundation. Are you deleting it because that requirement is stipulated elsewhere in our bylaws? If not, it needs to be retained ... [4]

**Commented [DK5]:** As a practical matter, Belmont has municipal utilities (and for gas and cable they are IOUs). Thus, separate metering could be required. Since consumption rises when people don't pay their own consumption directly, other town committees ... [5]

**Commented [DK6]:** Does the fact that you have not modified the wording mean that town counsel has fully vetted ways people could bypass this ownership restriction? My original query regarded modifiable partnership interests, such as in an LLC. There are ... [6]

**Commented [DK7]:** OK. I think by including all ADUs, the height and setback requirements will remain applicable to the new structures. This addresses a concern I had on the earlier draft.

**Commented [DK8]:** The language should be tightened here, since "within" could be entirely within or within plus additional footprint. Were an ADU to increase that footprint, or add stories, the implication would be a larger structure close to the front lot line, or much ... [7]

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- d) Any Lot containing a new detached ADU, any ADU created by adding Gross Floor Area to the Principal Dwelling, a Single-Family Dwelling, or any ADU created by adding Gross Floor Area to an existing detached Accessory Building or Structure shall meet the Lot Coverage and be in accordance with the Open Space and building coverage requirements of as established by Table 6.14.5(d) below. If the Principal Dwelling, and any driveway, parking space, or accessory structure other than an ADU on the Lot shall still be subject to the Lot Coverage, and Open Space requirements of Section 4.2.1.
- d) Proposals seeking to exceed Maximum Lot Coverage or Minimum Open Space may seek a Special Permit from the Planning Board.

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Table 6.14.5(d) - New ADU Dimensional Requirements

(1) Lot Type and Zoning District	(2) Max Lot Coverage*	(3) Min. Open Space*
Transit-Adjacent Lot in Single Residence A	25%	45% - TA Zone 35% - Non-TA Zone
Other Lot in Single Residence A	25%	43%
Transit-Adjacent Lot in Single Residence B	30%	45% - TA Zone 35% - Non-TA Zone
Other Lot in Single Residence B	30%	43%
Any Lot in Single Residence C	30%	45%
Transit-Adjacent Lot in Single Residence D	25%	45% - TA Zone 35% - Non-TA Zone
Other Lot in Single Residence B	25%	43%
Any Lot in General Residence	35%	35%

\* Maximum Lot Coverage includes the coverage requirement under Section 4.2.1 plus a fixed additional percentage, as applicable and as provided in column 2 above. Correspondingly, Minimum Open Space has been reduced by the proportional amount of land area allowed as additional Maximum Lot Coverage with an additional reduction if outside of the TA. Note that these dimensions are only applicable for the establishment of an ADU as a (or part of) a new accessory building or a new building addition.

- e) Proposals seeking to exceed the Maximum Lot Coverage or Minimum Open Space requirements of Section 6.15.4(d) may seek a Special Permit from the Planning Board in accordance with Section 7.4.

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6.14.6 Parking Requirements

- a) One (1) additional Parking Space shall be required for an ADU unless the property is located on a Transit-Adjacent Lot 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 whether or not consistent with the existing driveway.

**Commented [DK9]:** There was (appropriately) a great deal of discussion at the last PB meeting about using the ADU allowances to create a larger footprint, but then (or after a developer's sale), not using it as an ADU but rather as part of the primary residence. The pathway would bypass existing regs on building lot coverage and open space.

This is still not addressed in the bylaw. Indeed, at the last PB meeting, the chair said the zoning should not be drafted assuming that people will cheat, and should not try to go against the market forces that developers face in trying to maximize their space and returns. **In fact, this is exactly what zoning should do. Guardrails in zoning, and all statutes, need to be in place at the beginning to address and prevent the obvious mechanisms people will use to bypass the intent of the regulations. Market forces operate within the parameters of laws and regulations of the society in which the activity is occurring.**

**Commented [DK10]:** As noted in my last set of comments, increasing lot coverage and reducing minimum open space is something that should be done in a second-round of ADU revisions because (a) it is not required in the state law, so not time-pressured; and (b) we don't know the types of problems that will arise with ADU implementation yet.

The language in the state final regs, both through the explicit inclusion of the term "Dover Amendment" in the text and vague and subjective terms in 71.03(3)(a)3 that seem to tee up a wide range of potential legal challenges by parcel owners, are worrying. Creating new property rights at this stage, as table 6.14.5(d) ... [8]

**Commented [DK11]:** Why are you granting an addition reduction in required open space outside of the TA? If it is for parking requirements (never more than one space), the need for this extra exemption will be driven by lot size, not distance from a bus stop. There is no reason to give this extra lot coverage by right.

**Commented [DK12]:** There was a question raised by a PB member at the last meeting as to whether the PB is the proper authority for this. Did town counsel confirm?

**Commented [DK13]:** As flagged above, this term is not sufficiently defined yet. Additional clarification is needed for the bylaw text relying on it to work.

d) Any increase in ~~The provision of any new parking or driveway area te-on a lLot to serve an~~ ADU shall not result in a violation of ~~as part of the establishment of an ADU shall be within the~~ ~~limits of required minimum required Open Space as per pursuant to Table 6.14.5.(d) above.~~

Commented [RC1]: See this added language

6.14.7 Design Requirements

- a) A detached ADU shall be no less than 5' from other Structures on the lot.
- b) Unless located within a pre-existing structure, 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 facade as the entrance to the Principal Dwelling.
- d) ~~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.~~
- e) ~~The ADU shall be located on the Lot so as not to impede vehicular access to and circulation on the Lot, Streets, or sidewalks.~~
- f) 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.

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Commented [DK14]: Much clearer language than last time.

Commented [DK15]: Same issue as flagged above. "Within" could include footprint expansion if not affirmatively restricted; or an additional story, if not affirmatively restricted.

6.14.8 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 ADU with square footage, showing the location of all existing and proposed Buildings on the lot, 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 any of the following criteria:

1) The construction of the ADU exceeds the limits of the accessory dwelling unit as defined in the Ordinance.

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2) A two-story accessory Building or adds a second story to an existing accessory Building; or a two-story accessory Building or adds a second story to an existing accessory Building.

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3) The construction of the ADU exceeds the limits of the accessory dwelling unit as defined in the Ordinance.

4) Decreases the Open Space below the minimum specified in Section 6.14.5.(d) for a lot.

5) Where Design and Site Plan Review is required pursuant to 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) ~~When an ADU is located 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.~~

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Commented [RC2]: Should this refer to Section 6.14.9?

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Commented [DK16]: These applications are well defined and seem comprehensive. I'm still not clear on whether problems identified in the DSPR must be fixed for the ADU to move forward, or whether this is merely a suggestive exercise and the by-right authority from the state give the property owner the right to proceed as they desire.

Commented [DK17]: Typo - should be "exceed"

6.14.9 Other Circumstances Requiring Special Permit-Preexisting Nonconforming Structures

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

- ~~a) The conversion of any nonconforming structure or portion thereof to an ADU shall be permitted in accordance with Sections 1.5.3 and 1.5.4, as applicable.~~
- ~~b) Alteration, reconstruction, extensions, or structural changes reasonably necessary to convert a nonconforming structure or portion thereof to an ADU shall not be deemed to increase the nonconforming nature of the structure so long as the structure will continue to be located on the original footprint.~~
- ~~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) Municipalities may require a Special Permit for development of a Protected Use ADU in a floodplain or aquifer protection overlay if required for the Principal Dwelling, provided that the Special Permit is based on clear, objective, and non-discretionary criteria.~~
- ~~c) A Special Permit for an ADU may only be granted upon a finding that the construction and occupancy of the ADU 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.~~

Commented [PK3]: This isn't necessary – repetitive of the existing floodplain protection district requirements.

Commented [DK18]: What about height (same footprint, potentially much bigger impacts)? Or a second story where there are very short setbacks?

#### 6.14.10 ~~Preexisting ADUs in Existence Before Adoption of this Section 6.14~~

~~The purpose of this Section is to ensure that ADUs 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 created pursuant to Section 6.11 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 in accordance with this Section 6.14.~~
- ~~b) Any other pre-existing Dwelling Unit that would be considered is a Protected Use ADU under this ordinance, including a pre-existing non-conforming units; must apply for and receive a Certificate of Occupancy, 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 and pre-existing ADUs must be registered with the Office of Planning and Building as follows:~~

- ~~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.~~

#### 6-14-126.14.11 ~~Enforcement~~

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

**Page 7: [1] Commented [DK1]**

**Doug Koplow**

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The state definition is below. It has no info I can discern on the duration of lease. How would the state definition not also apply to a furnished long-term lease?

Another issue is that there are likely ways to bypass the “reserved in advance” clause, which, if bypassed, would open up all sorts of rental options on the ADUs.

The text of the state definition: “Short-term rental”, an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such. “

**Page 7: [2] Commented [DK2]**

**Doug Koplow**

**2/4/2025 12:31:00 PM**

Definition incorporates the state’s revised definition well (which eliminated districts where a single family could be built by a variance, etc.)

However, I am still not clear on how you are limiting protected ADUs only to the lots within districts that already contain a single family residence by special permit, rather than implying there are by-right protected ADUs throughout the district for all lots.

Your definition of a “protected use ADU” links to any lot in these districts regardless of what is on them. Are you relying on 6.14.3 to constrain? That text links by right ADUs to another Dwelling Unit – however, the context is to set a maximum of one protected ADU. It does not seem to set the requirement that you can not have any protected ADU without an existing dwelling unit.

If you are addressing this issue elsewhere in the zoning, how? And if not, it needs to be included in the bylaw.

I do not read the state final regs as indicating any lot in a district with single families by special permit can put up a residential ADU by right. It’s important Belmont’s bylaw not do so either.

**Page 7: [3] Commented [DK3]**

**Doug Koplow**

**2/3/2025 2:47:00 PM**

What counts as a “lot” in this definition? Is this simply a bureaucratic way of saying “your driveway” or are you opening it up to all sorts of theoretical additional ways to avoid adding on-site parking?

For example, could such a lot be leased parking at some other location? If that lease option disappeared, would the property have to build a new driveway spot? Could “any lot” include public areas with parking, and if so, would it have to be open for daily access parking, or would a public school lot count even though it is used by other people from 7 am through 9 pm (if night events)? The language should be as simple as possible: if you are more than 0.5 miles from transit, you need an additional spot for an ADU on your property.

One final issue with the current definition: the EOHLC ADU regs have a definition for “lot” that applies to the entire parcel of land, not a sub-section of it applicable for parking, which adds to the confusion here. This definition and related bylaw text should be tightened.

**Page 7: [4] Commented [DK4]**

**Doug Koplow**

**2/4/2025 11:42:00 AM**

The state regs say that even modular units need to be attached to a foundation. It is important that any ADU have a proper foundation. Are you deleting it because that requirement is stipulated elsewhere in our bylaws? If not, it needs to be retained here or you need to demonstrate how adequate quality housing can be constructed without needing a foundation.

**Page 7: [5] Commented [DK5]**

**Doug Koplow**

**2/3/2025 2:51:00 PM**

As a practical matter, Belmont has municipal utilities (and for gas and cable they are IOUs). Thus, separate metering could be required. Since consumption rises when people don't pay their own consumption directly, other town committees should evaluate whether adding requirements for submeters or separate meters for new external construction, would make sense. These applications would not be expensive or require replumbing or rewiring the principal residence – so wouldn't trigger the cost escalation that the ADU regs aim to avoid.

**Page 7: [6] Commented [DK6]**

**Doug Koplow**

**2/3/2025 2:52:00 PM**

Does the fact that you have not modified the wording mean that town counsel has fully vetted ways people could bypass this ownership restriction? My original query regarded modifiable partnership interests, such as in an LLC. There are many fractional ownership models that may do the same thing.

It would be helpful if you described any additional due diligence they did.

**Page 7: [7] Commented [DK8]**

**Doug Koplow**

**2/3/2025 2:59:00 PM**

The language should be tightened here, since "within" could be entirely within or within plus additional footprint. Were an ADU to increase that footprint, or add stories, the implication would be a larger structure close to the front lot line, or much closer to neighbors than setbacks allow?

It's one thing to add an ADU inside an existing garage; very different to convert some little shed into a full ADU. Also, the current wording does not restrict increased non-conformity (i.e., not just continuing the existing one, but adding new ones). It should.

**Page 8: [8] Commented [DK10]**

**Doug Koplow**

**2/4/2025 12:19:00 PM**

As noted in my last set of comments, increasing lot coverage and reducing minimum open space is something that should be done in a second-round of ADU revisions because (a) it is not required in the state law, so not time-pressured; and (b) we don't know the types of problems that will arise with ADU implementation yet.

The language in the state final regs, both through the explicit inclusion of the term "Dover Amendment" in the text and vague and subjective terms in 71.03(3)(a)3 that seem to tee up a wide range of potential legal challenges by parcel owners, are worrying. Creating new property rights at this stage, as table 6.14.5(d)4 does, seems an inferior strategy to revising in 6 or 12 months as we know more..