Statement to Bristol Selectboard
December 11, 2023

RE: proposed revision of Bristol's zoning bylaws, Section 404 (ADUs)

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I serve on both the Planning Commission and the Development Review Board, but I am here tonight representing myself only, as a Bristol resident.

I'm asking the Selectboard to support a proposal I made to the Planning Commission, but which did not carry the day there.

It regards Section 404 of the bylaws governing Accessory Dwelling Units (ADUs).

I'm asking you, in this proposed zoning revision, to restore the full language of the **2017** bylaws in Section 404. This would close the loophole opened when that language was removed in the last revision, our now-current zoning rules.

Doing so would prevent another disaster like 34-36 Garfield Street.

That project represents a total failure of Bristol's zoning rules that left no one happy — the owner now has a building he can't use as hoped, and which he might have done differently with better guidance from the Town; neighbors in their long-time homes feeling violated, that their interests were not protected by the Town… And I can't imagine that the Selectboard and Town administrators are pleased with the whole thing.

I'm not trying here and now to parse out how it happened.

My focus here is on how to keep Garfield Street from happening again and again all over the village. Yes, let's have more ADU's. I support that. But let's make sure they fit in.

Restoring the 2017 language of Section 404 — or something close to it — would do that. It would help ensure that the density we invite is the density we can live with.

The language says, in essence, that when a property owner proposes a new building that has **two** new uses — a garage or workshop **and** an ADU, not just one or just the other — then that project is subject to Conditional Use Review.

Until the last revision of Section 404 in 2020, Bristol zoning regulations made an assumption, and a proper one, I think: That a **new** building combining **two new uses** is likely to have **more impact on neighbors**... It'll be a larger building, and likely taller…

It'll have people living there, in tighter proximity, with the potential light, noise, parking, privacy and other impacts that predictably come with increased residential density.

This assumption in the 2017 language of Section 404 makes perfect sense. That's likely why planning commissioners of yore put there in the first place.

And they backed up their assumption elsewhere in the regs, too. They defined an Accessory Structure (ie, a garage or workshop) this way (emphasis added):

> *ACCESSORY BUILDING OR USE: A building or use incidental, subordinate and reasonably necessary to the conduct of the principal structure or use.* ***Accessory building or use does not include any building or portion thereof used for living purposes.***

This definition is still in force.

Read together with the deleted 2017 language of Section 404, it makes clear what past planners thought: a garage is one thing, and an ADU is another, and if you want to build a **new** building that **combines both uses**, OK — but you have to go through Conditional Use Review first, the better to reduce the potential for negative impact and protect the neighbors' interests and the Town's.

But as the regs stand now — without the 2017 language — there's no guidance when an owner wants to build a **new** building that is **both** an Accessory Structure **and** an ADU. **It's a huge loophole…** big enough for 34-36 Garfield to get through.

Indeed, in the dust-up over Garfield Street, the Zoning Administrator at one point said the current regs offered him no guidance for the applicant's "garage + ADU" proposal. Look at the result — I assure you the neighbors do, and will, every day from here forward.

If the 2017 language remained in force for 34-36 Garfield Street, it's easy to see how the disaster could have been prevented (assuming, of course, that all the ADU rules were applied properly, which they were not in this instance — but that's another story).

It bears repeating: The 2017 version of the bylaws offered a way forward in such an instance that also made perfect sense — if the owner goes through Conditional Use Review, considers the potential impact on neighbors, and builds accordingly, he might have his project.

And such a review provides a public process where the neighbors get clear notice of the plan and a chance to be heard on it — something we know, in retrospect, they feel they did not get on Garfield Street.

That process would not likely have stopped the owner from building. Rather, it would have encouraged him to make it fit better, have less impact on the neighbors.

In this round of revisions, with the lessons of 34-36 Garfield fresh in mind, I advocated on the Planning Commission for closing this loophole… My motions to restore the full 2017 language were defeated.

So, I'm hoping you might consider it.

Currently, the Zoning Administrator tells me, the Town is advising applicants for such "garage + ADU" projects to build the whole building but just call it an Accessory Structure, and then, once it's an existing garage, go ahead and apply for and then build out the ADU.

That might be a handy bureaucratic accommodation, but it doesn't make the impact of such a combined-use project go away. Really, it seems like an end run, avoiding and ignoring the question of potential negative impact of such a combo project. It violates the whole spirit of zoning regulation.

And it threatens to make a joke of Bristol's zoning rules. It sends a message: anything goes here; Bristol will protect a builder's interests, but the neighbors' interests and the Town's take a back seat.

Is that the direction we want to go?

A note about the HOME Act and ADUs:

The reason offered for opposing my proposal has been, in essence, 'Vermont's new HOME Act says we can't regulate ADUs.'

I'm not a lawyer, but a careful reading of the HOME Act does not support this interpretation.

The HOME Act clearly says a town can only apply minimal review for ADUs that are additions or renovations to **existing** homes, or **existing** buildings **converted** to ADUs, or **new** buildings that are stand-alone ADUs (not connected to the existing main house).

But the HOME Act is otherwise silent on the matter of combined uses — like a "garage + ADU." It offers no guidance and makes no prohibitions on how a town may regulate a **new** building that contains **two new uses, one of them an ADU**.

It repeatedly uses the term "ADU" — but in not one instance does it say anything about ADU's combined with other uses in **new** buildings. It does not say that a new "garage + ADU" gets a free pass just because it has an ADU on top.

A **new** building that's an “ADU + garage” is another animal, and the HOME Act is silent on that, which means Bristol can, if it chooses, have additional bylaws for dealing with such projects.

And please consider: If the 2017 language of Section 404 is restored, Bristol’s ADU regs will actually be more permissive than the HOME Act.

The HOME Act prohibits an ADU if the main residence is already a duplex, or if it is not owner-occupied — a dead end in both cases. But restoring the 2017 language in Bristol’s Section 404 would offer a way forward for a property owner in these instances. Bristol’s regs would be **more permissive than the HOME ACT, more encouraging** of home owners building ADUs. And we want more ADUs, right?

In such circumstances, all home owners would need to do is have Conditional Use Review. That is not much of a burden. And if we wanted to make it even easier in these circumstance, the restored language could call for **Site Plan Review rather than Conditional Use Review.**

Either way, the outcome of such projects would prove better for the builder, better for the neighbors, and better for the Town.

Below is Section 404 as it appears, in full, in the 2017 bylaws.

*In 2020, the second part — **the emboldened, italicized part** — was cut from Section 404, and so, the current regulation is now just the top half.*

SECTION 404: ACCESSORY DWELLING UNIT

An accessory dwelling unit that is located within or appurtenant to an owner-occupied one- family dwelling shall be a permitted use. An accessory dwelling unit shall be defined as an efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a one-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

1. The owner occupies either the primary dwelling or accessory dwelling.

2. The property has sufficient wastewater capacity.

3. The accessory unit does not exceed the greater of 30 percent of the total habitable floor area of the single-family dwelling or 1,000 sq. ft.

4. Applicable setback, coverage, and parking requirements specified in these Regulations are met.

Any accessory dwelling unit, new or existing, that meets the above conditions is a permitted use in all districts. However, any new accessory dwelling unit, or revision to an existing accessory dwelling unit, requires a Conditional Use Permit if it results in:

1. A violation of any of the above conditions or,

2. A new accessory structure or,

3. An increase in the height or floor area of the existing dwelling or,

4. An increase in the dimensions of the parking areas,

5. Neither unit is owner-occupied.