

**MINUTES**  
**SPECIAL PUBLIC HEARING BETWEEN**  
**THE PLANNING BOARD AND THE TOWN COUNCIL**  
**MONDAY – NOVEMBER 3, 2003**  
**SPECIAL MEETING – 7:00 P.M.**

**Item 1. Call to Order.** Chairman O'Reilly called the special joint meeting of the Scarborough Town Council and Planning Board to order at 7:07 p.m.

**Item 2. Pledge of Allegiance.**

**Item 3. Roll Call.** Roll was called by Patrick J. O'Reilly, Council Chair. Ronald W. Owens, Town Manager, was also present.

Planning Board Members:

Susan Auglis  
Millard (Bud) Hanson  
Charles E. Callahan  
Thomas A. Farnkoff  
Mark E. Parada  
Richard A. Shinay, Chair

Town Council Members:

Suzanne A. Foley-Ferguson  
Mark J. Maroon  
Sylvia J. Most  
Steve N. Ross  
Patrick J. O'Reilly, Chair

Also present: Joseph F. Ziepniewski, Town Planner; David Grysk, Code Enforcement Officer; and James Wendel, Town Engineer.

At this point R. Shinay stated that he is an attorney in town and his law firm represents a party that has an interest in the outcome of these amendments. He stated that he felt it appropriate for him not to participate in these discussions.

**Order No. 03-145, 7:00 p.m. Public hearing on the proposed amendments of Chapter 405, the Zoning Ordinance, by adding a new section regarding accessory apartments.** Chairman O'Reilly stated that this would serve as the public hearing at both the Planning Board level and the Town Council level. A second reading is scheduled at the next Town Council meeting on Wednesday, November 5, 2003, where, after review by legal counsel, the Council will consider this along with any amendments. He then opened the public hearing at 7:10 p.m.

Mark Sangster, Winnocks Neck Road, expressed his approval of the proposed ordinance change by stating it is a reasonable proposal and this will keep Scarborough's families together.

Randy Sargent, 134 Broadturn Road, expressed his approval of the accessory apartments, particularly for family members who would find it difficult to remain in town. He stated he feels it would be a real benefit for the elderly in this town.

Catherine Alexander, attorney at Drummond, Woodsum & MacMahon in Portland, stated she was present on behalf of her clients Christopher and Nalini Rogers, residents of Prouts Neck. She stated that the Rogers strongly support the proposed amendment to the Zoning Ordinance allowing an accessory unit. She stated her comments are based on an earlier draft from tonight's draft from the town's attorney and referred to a letter dated October 31, 2003 (addressed to Patrick O'Reilly, Chair of the Council, and Michael Wood, Acting Chair of the Planning Board), with her suggestions, understanding they may be moot given the suggestions of Chris Vaniotis. She briefly went through each suggestion:

1. Although the intent of this amendment includes accessory units not just in the primary structure on the property but also in a garage, or additional building, she suggests including language that provides accessory units may be constructed within the principal structure, within an existing garage, or as a new construction.
2. The language of the draft included reference to accessory units, as well as accessory apartments, and she feels to give it consistency it should be referred throughout to accessory units.
3. She believes the intent of the amendment is to provide the benefit of accessory units to all residents of Scarborough, including year-round and seasonal residents. She states her client's mother is elderly and would like to reside in an accessory unit on her son's property while he and his wife are in Scarborough, who are both seasonal/summer residents. By adding language to Performance Standard 1(a) that allows that residents may be seasonal it would improve and clarify the language for the benefit of all residents.
4. She also felt that the draft might be improved by allowing some flexibility with respect to a common utility meter, unless this is prohibited by the utility company serving the lot.
5. It would also be helpful if the registration form was recorded in the Registry of Deeds to provide notice to the public and to include a jurat that would allow these forms to be recorded.

In response to a question from B. Hanson regarding the 600 square feet of living space, Councillor Maroon, stated that at the Ordinance Committee level he research everything he could find pertaining to accessory apartments. Although the concept is a good idea, there are pitfalls. In reviewing all the information he found that 600 square feet was consistent and is the size of a garage and allows for a reasonable efficiency apartment with a bedroom, bathroom and living area, but does not make it so convenient that it would easily trip into a second apartment.

Councillor Most asked where the right place would be to add the language about the deeds and what were the pros and cons of doing this.

Catherine Alexander, attorney at Drummond, Woodsum & MacMahon in Portland, added one final point and that was the intend was to allow both year round and seasonal residents to take advantage of this and would require a change in both Section 9, Performance Standard A, as well on the registration form that provides that, "I/We will be occupying the property located at \_\_\_\_\_ as my/our primary(/seasonal) residence."

There being no further comments, Chairman O'Reilly closed the public hearing at 7:22 p.m.

Councillor Ross, Chair of the Ordinance Committee, stated that he had the opportunity to review the town attorney's draft prior to the meeting. In reviewing the attorney's document it has been simplified greatly, but it was the intent of the Ordinance Committee to be redundant. He presented the Council and Board members this evening with a clean copy of the town attorney's recommendations. Councillor Ross further stated that he was aware of the recommendations from Ms. Alexander, but was unable to really review these with the exception of the utility meter and noted that there could be the possible that a utility company would not service the accessory unit with a common meter. The concept of the common meter had been very important the Ordinance Committee and added the following language: "Should a utility company be unwilling to service the accessory unit with a common meter, the applicant must

provide the Board of Appeals with a letter signed by the utility company so stating.” There should be something on file from the utility company that it is their policy not to allow the common meter. One other item that he had added was the number of parking spaces, he recommends that the minimum number for an accessory unit should be one, with the possibility of more spaces. He was prepared to go through Ms. Alexander’s comments and receive comments from the group to have a working document for the November 5, 2003, Town Council meeting.

Chairman O’Reilly noted that the Town Council held the first reading on this order with the document that came out of the Ordinance Committee, which was prior to the town attorney’s draft and any changes would occur at the second reading.

In response to an earlier question from Councillor Most, regarding the language about the deeds and the pros and cons of doing this, Ms. Alexander stated that the language that she was proposing was to add a jurat, which is an acknowledgment by a notary, which would then allow the document to be recorded in the Registry of Deeds for public notice.

In response to a question from Chairman O’Reilly, Ms. Alexander stated that even if the property were to be transferred, the application for the accessory apartment would have to be applied for, it would not transfer.

C. Callahan stated that the intent of this proposal was to keep families together; however, the language does not preclude renting the accessory apartment to anybody has the potential in making property owners potential landlords. In response to Mr. Callahan’s comments, Chairman O’Reilly stated that there is the potential that a property owner could construct an accessory apartment off a detached garage, live in the apartment and then rent out the principle residence as an income source and these could not be restricted to just renting to family members.

Councillor Foley-Ferguson asked for the Planning Boards input regarding the 600 square feet and asked Mr. Hanson if he felt that the 600 square feet was too small, and he indicated yes. Councillor Foley-Ferguson further stated that the intent had not necessarily been for seasonal housing but to allow in-law apartments and added that enforcement would be an issue even if the town allowed only family units.

C. Callahan stated that the way it stands, one could build a 600 square foot house in the side yard and then rent it to USM students for the year or to anyone who wanted to rent it.

Councillor Foley-Ferguson stated that the Ordinance Committee discussed what zones would this proposal be allowed in.

B. Hanson felt 800 square feet would be more reasonable for two people and that 600 square feet would be really tight for two people.

Councillor Foley-Ferguson stated her concerns on page 2 of the town attorney’s document, #D regarding 15,000 square feet, if sewerred, to be eligible for the addition of an accessory unit. She had been the dissenting vote on this because the majority of the older homes are setting on lots of 10,000 square feet and felt that the square feet should be the minimum of that is allowed in a particular zone; she also felt that all the suggestions made by Ms. Alexander were valid, but felt that the seasonal issue should be discussed; as far as the minimum off street parking she felt there should be no limit and the definition of accessory unit approved by the Board of Appeals and meeting the requirements of sections VII.B and IX.I shall not be considered a separate dwelling unit under this ordinance and the a decision needs to be made by Wednesday whether they should be considered a separate dwelling or not be a separate dwelling under the Subdivision Regulations, the Scarborough Growth Management Ordinance, the

Scarborough Impact Fee Ordinance, the Scarborough Road Impact Fee Ordinance, or the Scarborough Sewer Assessment Ordinance.

In response to a question from Councillor Foley-Ferguson, regarding whether or not this should be exempted from the Subdivision Regulations as a dwelling unit, Mr. Ziepniewski, Town Planner, stated that the town attorney recommended against Planning Board approval. The Planning Board needs to be specific as to what it is you want the Planning Board to do. For example, there is a subdivision with two acre lots in the RF zone and now they come in with accessory units – do we look at the septic systems, or do we want to nitrate studies, traffic calculations on single family homes, the Impact Fee, Recreation and Open Space Fee all these items need to be looked at unless the Planning Board is told what to look at. Any exemption would go before the Zoning Board of Appeals. Further discussion ensued regarding this issue.

S. Auglis stated that the Planning Board would look at any subdivision and if approved, any resident who wanted to add an accessory unit would then have to go before the Zoning Board of Appeals. Discussion ensued with regards to whether a developer could come forward with accessory units already in the subdivision plan and what would be done.

Councillor Ross felt that there is a fail safe already built in this recommendation in that the individual who wants to build the accessory unit must live in the accessory unit or the principle structure in order for it to be approved.

David Gysk, Chief Code Enforcement Officer, stated that anyone coming into request this would have to go before the Zoning Board of Appeals and request an accessory unit; however, once the home is sold the new owner would have to come back in and apply for an accessory unit.

In response to a question from T. Farnkoff, regarding whether or not a new subdivision being proposed could have conditions that these units could not be added on after the fact, Chairman O'Reilly stated he would think that there are some subdivisions could have a covenant that would prohibit this from happening.

Councillor Foley-Ferguson stated, as it stands right now if we exempt the Scarborough Subdivision Regulations any accessory units will not have to go to the Planning Board, just the Zoning Board of Appeals.

Chairman O'Reilly stated there will be another opportunity to speak on this issue prior to the second reading on Wednesday, November 5, 2003.

**Item 4. Adjournment.** Meeting adjourned at 7:50 p.m.

Respectfully submitted,

Yolande P. Justice, Town Clerk  
*(Transcribed but not present at meeting)*