



# CITY OF SALEM, MASSACHUSETTS

## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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October 21, 2019

Ordinances, Licenses and Legal Affairs (OLLA) Subcommittee  
Attn: OLLA Chair, Councillor Robert McCarthy  
Salem City Hall  
93 Washington Street  
Salem, MA 01970

Re: Accessory Living Area Ordinance – Response to Concerns

Dear Councillor McCarthy,

This letter is to provide you with a summary of edits to the proposed ordinance for the OLLA to consider, including the reasoning for each edit. All edits explained herein are made within the enclosed ordinance in track changes.

### **Input from the City Solicitor Regarding Owner Occupancy**

As you are aware, at the City Council meeting on October 16th, Section 4.E. was revised to include following sentence in red, *“At least one (1) owner of the residence in which the accessory living area is created shall reside in one (1) of the dwelling units as a principal place of residence. For the purpose of this section, the “owner” shall be one or more individuals residing in a dwelling, who hold title and for whom the dwelling is the primary residence for voting and tax purposes.”*

The City Solicitor, Beth Rennard, has recommended editing the second sentence in Section 4.E. with the underlined, red text below:

*At least one (1) owner of the residence in which the accessory living area is created shall reside in one (1) of the dwelling units as a principal place of residence. For the purpose of this section, the “owner” shall be one or more individual who holds title to the property and for whom the dwelling is the primary residence as evidenced by voter registration, tax return or other documentation demonstrating primary residence.*

## **Input from the Zoning Enforcement Officer Regarding Dimensional Standards**

On October 16, 2019, Planning Director Tom Daniel; Zoning Enforcement Officer Thomas St. Pierre; and myself met with Councillor Dibble and Councillor Dominguez to discuss the Councillors concerns with the ordinance. At that meeting, Tom St. Pierre noted there should be language to clarify the process of adding an accessory living area to a non-conforming accessory structure. For example, if a homeowner would like to add an accessory unit to a garage that does not comply with the setbacks, a special permit should be required. Subsequent to that meeting Mr. St. Pierre has helped draft the following language to address this concern.

*Section 5. Special Permit. A Special Permit shall be required to use an existing accessory structure that does not comply with Section 4.1 (Table of Dimensional Requirements) as an accessory living area.*

At the October 16<sup>th</sup> meeting Mr. St. Pierre asked about the dimensional standards for a new structure that would be built for an accessory living area, e.g. what would the distance between buildings need to be? Planning staff recommended that a new structure built for an accessory living area would need to comply with the underlying dimensional requirements. Subsequent to the October 16<sup>th</sup> meeting with the Councillors, Mr. St. Pierre concurred that any new structure built for purposes of an accessory living area would need to comply with the underlying zoning. Thus in an R1 zone the distance between building would be 40 feet. No new language is necessary for this.

## **Edits in Response to Councillor Dibble's Concerns**

At the meeting on October 16<sup>th</sup>, Councillor Dibble requested revisions to the ordinance to address his concerns. Each concern that Councillor Dibble expressed is enumerated in bold followed by a response from staff. Edits made to the enclosed ordinance in track changes are shown in red.

**1. The primary residence should not be allowed to be a short-term rental.**

Section 4.R revised: *Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory living unit **and in a primary residence that has an accessory living area.***

**2. There should be an upper limit on maximum square feet.**

Section 5.C. revised: *The Zoning Board of Appeals may grant a waiver to allow the accessory living area to exceed 800 square feet of habitable space, **up to a maximum of 1,000 square feet**, taking into consideration peculiarities of the layout of the primary dwelling.*

**3. There should be a lower limit on minimum square feet.**

There are health codes that dictate a minimum square footage; nevertheless, Councillor Dibble requested that a minimum square footage be added. According to the sanitary code, every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupancy. The floor space is calculated on the basis of total

habitable room area. Thus, the minimum habitable square footage for three occupants is 350 square feet. If the City Council is comfortable with setting the minimum accessory living area unit at a size that would accommodate three people, the following language could be added:

Section 5.C. added: *The accessory living area shall not contain less than 350 square feet of habitable space.*

It should be noted that a habitable room is defined as “every room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding rooms containing toilets, bathtubs or showers and excluding laundries, pantries, foyers, communicating corridors, closets and storage spaces.”

**4. Egress staircases should not be permitted on the primary façade.**

Section 5.K. added: *Egress stairs shall not be permitted on the primary façade.*

**5. It should be limited to structures with five or fewer units.**

Section 5.F. added: *The primary use shall not exceed five units.*

**6. In the table, NRCC has a dash. Make this a “Y” or “N”.**

The NRCC is not in the use table which is why there is not a “Y” or “N”.

**7. Add language that if the Zoning Board of Appeals issues a special permit for an accessory unit without parking because the tenant or owner does not have a car, then this condition will remain in place in perpetuity and future tenants can't have a car either.**

As is the process today, unique situations are handled through conditions in the decision from the Zoning Board of Appeals. The decision is recorded with the deed of the property and can only be changed by the Zoning Board of Appeals.

Please do not hesitate to contact me at [achiancola@salem.com](mailto:achiancola@salem.com) or at 978-619-5685 if you have any questions.

Sincerely,

Amanda Chiancola, AICP  
Senior Planner

cc: Salem City Council  
Mayor Kimberley Driscoll  
Ilene Simons, City Clerk  
Thomas St. Pierre, Zoning Enforcement Officer  
Tom Daniel, Director of Planning and Community Development