



CITY OF SALEM PLANNING BOARD

Report to City Council

May 11, 2020

At its meeting on May 8, 2020 the Planning Board voted eight (8) in favor (Ben Anderson, Matt Veno, Carole Hamilton, Helen Sides, Kirt Rieder, Noah Koretz, Matt Smith, and DJ Napolitano) and none opposed to recommend that the City Council approve the amendment relative to Section 3.1 (Table of Principal and Accessory Uses) by deleting the “Accessory Living Area” Accessory Use in its entirety and inserting an “Accessory Dwelling Unit” Accessory Use in the RC, R1, R2 and R3 zoning districts as follows:

E. ACCESSORY USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD	NRCC
Accessory Dwelling Unit	Y	Y	Y	Y	N	N	N	N	N	N	-

At the same meeting, the Planning Board voted eight (8) in favor (Ben Anderson, Matt Veno, Carole Hamilton, Helen Sides, Kirt Rieder, Noah Koretz, Matt Smith, and DJ Napolitano) and none opposed to recommend that the City Council approve the amendment relative to Section 10 (Definitions), Section 3.2.8 and Section 3.2.4 with the suggested edits from Staff that were presented at joint public hearing on April 13, 2020, in addition to recommended revisions to Sections 10 and 3.2.8 that are summarized below and shown as highlighted text in the enclosed supplemental ordinance.

Section 3.2.8

The Planning Board recommends the ordinance be clarified to state there shall not be a net loss in the *total measured caliper* of private trees. Thus, “*total measured*” is added to sections 3.2.8 (4.E and 6.B).

The Planning Board discussed the suggestion to require a special permit for additions and new detached structures. Rather than requiring all additions to require a special permit, the Planning Board recommends an addition to a principal home to accommodate an accessory dwelling unit be allowed by right, just as an addition to a principal home is allowed by right. The Planning Board also recommends that accessory dwelling units be allowed by right within an *existing* unattached structure.

However, the Planning Board recommends that *new* unattached structures and *additions to existing* unattached structures be treated differently, as a method to mitigate the R1 neighborhood concerns that came up during public comment. To that end, the Planning Board recommends that a special permit be required when an *addition is proposed to an existing* detached structure to accommodate an accessory dwelling unit and that accessory dwelling units not be allowed in *new* detached structures.

Sections 10 and 3.2.8 (4.E; 4.F; and 6.D) have been added to the ordinance to capture the above requirements.

Section 10:

“Accessory dwelling unit: A housekeeping unit, with its own sleeping, cooking and sanitary facilities, located *either in an existing unattached accessory structure, or* within or attached to a principal dwelling and subordinate in size to the principal unit(s), separated from it in a manner which maintains the appearance of the principal unit(s), and allowed pursuant to Section 3.2.8 of this ordinance”

Section 3.2.8

4.E. The accessory dwelling unit shall not be constructed within a new detached structure.

4.F. The accessory dwelling unit shall be within or attached to the principal dwelling, or within an existing unattached accessory structure unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.

6.D. The Zoning Board of Appeals may grant a waiver to allow an existing unattached accessory structure to be expanded to accommodate the accessory dwelling unit.

The Planning Board made it clear that if there is an addition to either the principal dwelling or the accessory structure to accommodate the ADU, the required setbacks must be met. No further language was added to the effect because it is covered under section 3.2.4(4) and 3.2.4(5).

If you have any questions regarding this matter, please feel free to contact Tom Daniel, AICP, Director of Planning & Community Development, at 978-619-5685.

Yours truly,



Ben J. Anderson Chairman

CC: Ilene Simons, City Clerk

This supplemental ordinance is provided it illustrate the Planning Board’s recommended revisions that are summarized in the recommendation letter. Recommended revisions are highlighted.

Section 10

The Salem Zoning Ordinance Section 10 Definitions is hereby amended by deleting the definition “Accessory Living Area” in its entirety and inserting the definition “Accessory Dwelling Unit” as follows:

“Accessory dwelling unit: A housekeeping unit, with its own sleeping, cooking and sanitary facilities, located either in an existing unattached accessory structure or within or attached to a principal dwelling and subordinate in size to the principal unit(s), separated from it in a manner which maintains the appearance of the principal unit(s), and allowed pursuant to Section 3.2.8 of this ordinance”

The Salem Zoning Ordinance Section 3.2.4 Accessory Buildings and Structures is hereby amended by deleting paragraphs numbered 4 and 5 and replacing them with the following:

“4. Unattached accessory dwelling units shall comply with all regulations set forth in Section 3.2.4 (Accessory Buildings and Structures) of this Ordinance with the exception of setbacks.

5. Unattached accessory dwelling units shall comply with all setbacks of the principal structure, as set forth in Section 4.1 of this ordinance (Dimensional Requirements), irrespective of whether the principal structure on the property in question complies with such setbacks or not.

6. Accessory structures, garages and unattached accessory dwelling units shall not exceed one-half (1.5) stories or eighteen (18) feet in height.”

The Salem Zoning Ordinance Section 3.2.8 Accessory Dwelling Areas is hereby amended by deleting this Section in its entirety and replacing it with the following:

“3.2.8 Accessory Dwelling Units. Accessory Dwelling Units shall be allowed as provided set forth in this section.

1. Purpose.

- A. To add rental units to the housing stock to meet the needs of smaller households and make housing units available to households who might otherwise have difficulty finding housing.
- B. To encourage the efficient use of the city's housing supply while preserving the character of the city's neighborhoods.
- C. To maximize privacy, dignity, and independent living among family members preserving domestic family bonds as well as to protect the stability, property values, and the residential character of the neighborhood.

- D. To permit the owner of an existing, or a proposed, principal dwelling to construct one additional dwelling unit per lot. Such a use is incidental and subordinate to the principal dwelling.
- E. To increase the supply of housing and the diversity of housing options, in response to demographic changes such as smaller households and older households.

2. Procedure.

- A. The Building Inspector shall administer and enforce the provisions of this section unless a Special Permit is required then the Zoning Board of Appeals shall be the Special Permit Granting Authority and the Building Inspector shall enforce the provisions of this section and of the Special Permit
- B. When a waiver is required, a Building Permit shall not be issued until a Special Permit has been granted and duly recorded.

3. Application.

- A. The Application for the Special Permit and/or Building Permit, if required, shall:
 - 1. Be signed by one hundred (100) percent of the record title ownership interest of the principal dwelling and shall include a copy of the deed and in the case of a property held by a condominium trust, all owners of all units within the condominium.
 - 2. Include a floor plan of the accessory dwelling unit, the principal dwelling where it is to be located and all elevations. All plans shall be drawn to scale and identify the existing structure and proposed modifications to create the accessory dwelling unit.

4. Requirements.

- A. The minimum parking required for the principal dwelling pursuant to Section 5.1 of this ordinance shall not count as off-street parking for the accessory dwelling unit. The accessory dwelling unit shall have one (1) dedicated off-street parking space unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- B. There shall not be a net loss in the **total measured** caliper of private trees on the lot in which the accessory dwelling unit will be located unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- C. The accessory dwelling unit shall not contain less than 350 square feet of habitable space.
- D. The accessory dwelling unit shall not contain in excess of 800 square feet of habitable space, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- E. **The accessory dwelling unit shall not be constructed within a new detached unit.**
- F. **The accessory dwelling unit shall be within or attached to the principal dwelling, or within an existing unattached accessory structure, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.**
- G. No more than one (1) accessory dwelling unit shall be located upon a single lot.

- H. An accessory dwelling unit shall not be permitted in a building with five (5) or more units.
 - I. At least one (1) owner of the residence in which the accessory dwelling unit 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 who hold 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.
 - J. Electricity, water and gas shall be provided by a single service to both the accessory dwelling unit and the principal dwelling.
 - K. The accessory dwelling unit may not be sold or 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 or single ownership and shall not be severed in ownership.
 - L. Entry shall be located through existing entry or on the back or side of the main dwelling.
 - M. Egress access shall be located on the side or rear of the building so that visibility from public ways is minimized.
 - N. The accessory dwelling unit shall not contain more than two (2) bedrooms.
 - O. The accessory dwelling unit shall be clearly subordinate in use, size and design to the principal dwelling.
 - P. The accessory dwelling unit must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
 - Q. There shall be no occupancy of the accessory dwelling unit until the Building Inspector has issued a certificate of occupancy that the principal dwelling and accessory dwelling unit shall be in compliance with all applicable health and building codes.
 - R. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by Section 3.2.8 and/or special permit conditions has not been fulfilled.
 - S. By filing the Application for a Special Permit or Building Permit for an accessory dwelling unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit.
 - T. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory dwelling unit.
 - U. The accessory dwelling unit shall obtain certificate of fitness subject to the provisions of Section 2-705 of the City of Salem Code of Ordinances.
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 dwelling unit.

6. Waivers. Upon the request of the Applicant, the Zoning Board of Appeals may grant a Special Permit pursuant to Section 9.4 to waive the following requirements in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the accessory dwelling unit ordinance.
 - A. Notwithstanding anything to the contrary herein, the minimum required amount of parking may be waived if the Zoning Board of Appeals finds it is impractical to meet the parking standards and that such waivers are appropriate by reason that it will not result in or worsen parking problems in or in proximity to the Project, and upon demonstration to the reasonable satisfaction of the Zoning Board of Appeals that a lesser amount of parking will provide positive environmental or other benefits, taking into consideration:
 1. The availability of surplus off-street parking in the vicinity of the use being served
 2. The proximity to public transportation;
 3. The availability of public or commercial parking facilities in the vicinity of the accessory dwelling unit;
 4. The impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
 5. Such other factors as may be considered by the Zoning Board of Appeals.
 - B. The Zoning Board of Appeals may grant a waiver to allow a net loss in the total measured caliper of trees on the lot in which the accessory dwelling unit will be located taking into consideration the species of the tree, health of the tree, whether a replacement tree will be planted on another property or if a contribution to the tree replacement fund will be provided.
 - C. The Zoning Board of Appeals may grant a waiver to allow the accessory dwelling unit 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 principal dwelling.
 - D. The Zoning Board of Appeals may grant a waiver to allow an existing unattached accessory structure to be expanded to accommodate the accessory dwelling unit.
7. Termination.
8. The accessory living unit use shall terminate immediately upon any violation of any term or condition of this ordinance or of the Special Permit that the owner fails to cure, upon two (2) weeks written notice mailed to the applicant and to the occupants at the dwelling address by certified mail, return receipt requested.
 - A. Duty of Owner Upon Termination include:
 - a. The owner shall discontinue the use of the accessory dwelling unit as a separate dwelling unit.

- b. The kitchen facilities of the accessory dwelling unit shall be removed unless determined by the Building Inspector to be incidental and subordinate as an accessory use of the principal dwelling.
 - c. Any additional exterior entrance constructed to provide access to the accessory dwelling unit shall be permanently closed, unless the Building Inspector provides a waiver. The owner shall permit an inspection by the Building Inspector without a warrant.
7. Severability. All the clauses of this ordinance are distinct and severable, and if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this bylaw.”