



CITY OF SALEM, MASSACHUSETTS
DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

KIMBERLEY DRISCOLL
MAYOR

TOM DANIEL, AICP
DIRECTOR

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970

TELE: 978-619-5685 ♦ FAX: 978-740-0404

July 31, 2019

Salem City Council
Salem Planning Board
Salem City Hall
93 Washington Street
Salem, MA 01970

Re: Accessory Dwelling Unit Ordinance – Response to Comments

Dear City Councillors and Planning Board members:

At the July 8, 2019 City Council Joint Public Hearing with the Planning Board, relative to amending the Accessory Living Area zoning ordinance, the City Council directed staff to provide a written response to the questions that were asked at the public hearing. The attached memorandum contains a list of comments and questions asked at the hearing as well questions that have been posed to staff subsequent to the July 8th hearing. Each comment and/or question is followed by a response from staff.

I hope you find this information helpful for your discussion at the continued public hearing on August 15.

Sincerely,

Amanda Chiancola, AICP
Senior Planner

cc: Mayor Kimberley Driscoll
Ilene Simons, City Clerk
Tom Daniel, Director of Planning and Community Development



KIMBERLEY DRISCOLL
MAYOR

TOM DANIEL, AICP
DIRECTOR

CITY OF SALEM
DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-619-5685

Memo

To: City Council and Planning Board Members

From: Amanda Chiancola, Senior Planner

Cc: Mayor Kimberley Driscoll; Tom Daniel, DPCD Director; Ilene Simons, City Clerk

Date: July 31, 2019

Re: Accessory Dwelling Unit Comments and Responses

Below are comments from members of the community, the City Council and the Planning Board. Each comment is followed by a response from staff. Some of the comments herein were shared at the July 8th Joint Public Hearing and some comments were provided directly to staff. Individuals who presented the comments are not specifically identified. In order to avoid duplication of responses staff paraphrased and grouped similar comments from multiple community members.

Comments are organized into two sections. Section 1 are questions and answers. In Section 2, staff responded to the comments with a recommendation for the City Council and Planning Board to consider.

Section 1. Questions and Answers:

- 1 Do accessory units need to comply with typical building code requirements, for example, two means of egress for the unit?**

Yes. The accessory unit is also required to obtain a Certificate of Fitness at the time of permit issuance and every three years thereafter to ensure compliance with the state sanitary code and all city ordinances.

- 2 How many accessory units has Salem permitted, in what zones, what is the net gain?**

As shown in the table below, seven accessory units have been approved through the current ordinance. Six accessory units were approved in the Residential One-Family (R1) zone and one in

the Industrial (I) zone. There has been a net gain of four new units, the remaining three units were existing and legalized through the ordinance.

Address	Decision Date	Approved	Zoning	New or Legalize
8 Nurseway	3/16/2018	Yes	R1	New
33 Pickman Rd	7/3/2018	Yes	R1	Legalize
22 Clark Avenue	10/26/2018	Yes	I	Legalize
24 South Street	10/26/2018	Yes	R1	Legalize
42 Memorial Drive	7/3/2018	Yes	R1	New
22 Bertuccio Ave.	7/3/2019	Yes	R1	New
31 Greenway Rd.	5/1/2019	Yes	R1	New

3 How many special permits for accessory units been denied?

Zero.

4 Why propose the accessory units in the R2 and R3 zoning district (multi-family homes)?

Staff has heard from residents in R2 and R3 zones that they want the opportunity to create accessory units in their homes too. Staff has also learned there have been instances of illegal units throughout the residential zones- which are required to be removed. The illegal units are concerning not only because they are currently not allowed but also because illegal units do not get the safety inspections that permitted units get. However, since there appears to be a desire for these units in R2 and R3 staff recommends creating a permitting path that allows these units to be created safely.

5 Why was the R2 and R3 zoning change not part of any prior public discussions?

The accessory living area ordinance has been an iterative process that has been shaped by comments from community members and the City's Affordable Housing Trust Fund Board, well before the official public comment period started (the public hearing). At the housing forum on March 5th, staff asked for very broad input on accessory dwelling units. Subsequently, staff and the Affordable Housing Trust Fund Board took that input and used it to craft some recommendations and ask for specific input at the housing workshop on April 23rd. Prior to the housing workshop at the end of April, staff did not know there was interest in expanding accessory units to R2 and R3 zones. The good news is the City Council and Planning Board are still within the public hearing process to listen to comments and have the ability to make adjustments.

6 What other communities in Massachusetts allow accessory units in multi-family homes?

According to the Billerica table of use regulations, in law apartments are allowed by special permit from the board of appeals in VR, NR, RR, MF, NB, GB and AE districts. Newton allows accessory units in single-family and two-family homes. Boston ran a pilot program that allows accessory units for 1, 2 and 3 family homes.

The City of Salem allows carriage houses in the R2 to be converted into dwelling units via a special permit provided the carriage house was in existence since 1900 at its present location. This is an accessory living area, just in a very specific type of structure with a purpose of facilitating historic preservation.

7 It was suggested that the City consider potential implications for our older and densely settled historic neighborhoods, the majority of which are zoned R2.

The accessory unit will be controlled by the same dimensional requirements as the principal dwelling- for example, setbacks, height, and lot coverage. Likewise, an accessory unit in a local historic district would be required to receive approval from the Historical Commission for exterior alterations.

Many homes in the older, densely settled historic neighborhoods do not comply with the dimensional requirements. In that situation a special permit or variance would be required from the Zoning Board of Appeals for dimensional relief. Further, many of the aforementioned homes do not meet the parking requirements, thus even an interior accessory unit in a historic neighborhood will likely require a review from the Zoning Board of Appeals.

Staff is confident that negative impacts will be mitigated through the Historical Commission's review of homes in their jurisdiction and the Zoning Board of Appeal's review of homes in densely settled historic neighborhoods outside of the Historical Commission's jurisdiction.

8 Under the proposed ordinance, will the owner be able to opt to reside in either the principal residence OR the ADU?

Yes. Per the requirements 4.E.: At least one owner of the residence in which the accessory living area is created shall reside in one of the dwelling units as a principal place of residence at the time of permit issuance and a minimum of two years thereafter.

9 How do you ensure the unit will be affordable/moderately priced?

We are not ensuring the unit will be affordable. Several studies have shown that accessory units rent for below market rate rents in part because the accessory apartments are less expensive to build on existing houses or garages and are smaller than typical apartments. Therefore, while some units may not be affordable, it is expected that most of the units will be naturally occurring affordable. There is also no practical way to require/enforce a set an affordability requirement for an accessory unit when they are created by right.

10 How can we restrict ADUs from becoming condominiums?

Pursuant to Requirement 4.G. in the proposed amendment, "the ordinance specifically states that the accessory living area 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 living area shall remain in common or single ownership and shall not be severed in ownership."

11 How many units have other towns created? How many accessory units do we think will permit through this ordinance?

A list of accessory unit permits issued for the 100 cities and towns in the Metropolitan Area Planning Council (MAPC) region outside the City of Boston as of July, 2018 can be found on page 13 and 14 of "The State of Zoning for Accessory Dwelling Units" by Amy Dain, which is available here: <https://imagesalem.org/accessory-dwelling-units>.

The total number of permits issued for most communities range from 20 to 60. According to Amy Dain's research, during a three-year period municipalities with tenant restrictions granted 1 permit for every 1,000 houses whereas municipalities without tenant restrictions granted 1.8 permits for every 1,000 houses. Across all municipalities that reported permitting accessory units, with or without tenant restrictions, the rate was 1.4 permits granted per 1,000 single-family residences over the three-year period. If Salem were to attract 1.8 new accessory units for every 1,000 owner occupied homes the City would gain approximately 16 accessory units over a three-year period¹. Please take into consideration that this is an estimate based on other communities that are very different from Salem and some have different policies than the proposed ordinance.

Staff suspects in first year there will be several permits that do not result in a net gain but will be issued to legalize existing units. Under the current ordinance, the City has only attained a net gain of four new units out of the seven permits issued. Anecdotally staff has heard there are other instances of accessory units that were created without the benefit of a permit, but we do not know how many exist. For that reason, it is challenging to gauge how many units would be permitted in total (including legalizing existing units). Nevertheless, there is still value to legalizing units because the legalized accessory units will be required to meet building code requirements through the building permit process.

12 Could the City create a registry to help homeowners occupy the units with Salem community members and to help renters find out about accessory living area units?

Yes. However, the City cannot require homeowners to use the registry but we can create one. Staff recommends it is a policy rather than a requirement of the ordinance.

13 How will taxes be impacted?

All residential properties are taxed the same, the City Assessor follows the sales of each class. The accessory unit will increase the value of a home because the unit is an improvement. The market in the future will determine how much the value will change with a legal additional unit.

14 It was suggested that if the goal is to capture singles, then a one bedroom seems logical. If the aim is to capture a couple with 1-2 children, then two bedrooms seems very tight for 800sf.

The goal is to capture small households who earns less than \$65,000 annually- the income required to rent a standard 1-bedroom apartment in the Salem without being housing cost burdened. Those households include both singles and young couples as well as single-parents, students and local Salem employees- these are just a few examples.

Limiting the accessory unit to 1 bedroom would be tough for a single parent with a child- these units should be an option for that type of household. An 800 square foot unit would be tighter than a full house or even a typical two-bedroom unit, but it is feasible and that the small size could help keep the rental cost down.

¹ Salem has 9,277 owner occupied units, per the 2013-2017 American Community Survey.

Section 2. Staff Recommendations

- 1 It was suggested that the entry location be clarified. The language should emphasize that no additional, separate entry shall be constructed on the front facade. The core of the issue is captured in the current draft, but it is murky and needs further attention.**

The language in the proposed amendment states: "No separate entry to the accessory living area shall be permitted unless from existing entries from within the main dwelling from the back or from the side of the main dwelling."

Below are suggestions that staff recommends the City Council and Planning Board consider to clarify the murky language:

- In general, any new entrance shall be located on the side or rear of the building. Reasonable deviation from this condition shall be allowed in order to facilitate access and mobility.
 - Where there are two or more existing entrances on the front facade of a dwelling, if modifications are made to any entrance, the result shall be that one appears to be the principal entrance and the other entrances appear to be secondary.
- 2 Could a non-conforming home, e.g. a legal non-conforming two-family in an R-1 add an accessory unit?**

Staff recommends that this should be allowed. The ordinance limits each lot to one accessory unit. A legal non-conforming two-family is not a single-family with an accessory unit, as such in that situation the lot can accommodate an accessory unit.

- 3 Could the home be used as a short-term rental?**

Under no circumstance could the accessory unit be use as a short-term rental.

A homeowner could use the principal unit as a short-term rental- if the owner were to live in the accessory unit. The short-term rental ordinance gives a homeowner the right to rent their home as a short-term rental. Staff recommends not taking that right away as part of this ordinance.

- 4 There is a suggestion to a set a minimum parcel lot size -or- a minimum principal residence square footage, with a base year established as to which the above lot or square footage shall be measured, so as to deter speculators from modifying/combining lots to dramatically change the character of neighborhoods.**

Staff recommends not establishing a limit on the minimum parcel size or minimum size of the principal residence.

The purpose for a parcel size or principal home limit would be to protect the character of the neighborhood. Neighborhood character will be protected through the following safeguards that are written into the requirements: a limit to separate entries; the unit must be subordinate in use, size and design to the principal dwelling; and the accessory unit is controlled by the same dimensional requirements as the principal dwelling.

If there is room within the interior of an existing home, the owner should not be prohibited from creating an accessory unit based on their lot size or the size of their home, particularly since the

unit will not be visible from the exterior. Likewise, a homeowner should be allowed to build an accessory unit just as they would be able to build an addition, provided the same rules for dimensional standards are applied.

5 Why is owner occupancy required for the first two years?

Requiring home ownership at the time of permit issuance and for two years thereafter was modeled after the threshold that the Internal Revenue Service (IRS) applies in allowing an exclusion on capital gains on the sale of a primary residence.

Two years is proposed to offer the homeowner and the potential renter protection in the event of unforeseen circumstances. For example, if a homeowner gets relocated out of the area or if a homeowner passes away- does the renter get evicted or could the accessory unit and principal unit both be rented? Staff recommends the latter be allowed. A few alternative options are provided in the response to comment no. 6 below.

6 There were comments that the two-year owner occupancy minimum is too short. Commenters noted that construction alone takes 6-8 months, thus it would be easy for an investor to wait out the remaining time. Commenters also called attention to the emergence of new technology that will make it easy to buy/sell investment homes, specifically iBuying.

The crux of concerns with the two-years being too short is a potential for absentee landlords. If the City Council and Planning Board determine that two years is too short, a discussion should occur to develop standards that allow for flexibility rather than requiring owner occupancy in perpetuity. A few options with some flexibility built in are offered below for said discussion.

Option 1:

- Adopt the language as proposed, which requires owner occupancy at the time of permit issuance and two years thereafter. As currently proposed, the owner occupancy is not successive, so any future owner would not have to be an occupant.

Option 2: (staff recommends this option):

- Revise the language to require owner occupancy for a minimum of two years at the time of permit issuance and at the point of all future sales. This would require the owner occupancy to be successive for each owner.
- This option would make it less likely for the home to be bought through iBuying or for the purpose of being an investment property. Please be advised that this option would allow the owner to rent both units after two years. Therefore, it does not mitigate the possibility of an absentee landlord. However, given that even a single-family home can be rented, this option appears to be flexible and fair. If this option is preferred, below is draft language to consider:
 - “When a structure with an accessory living area is sold, the new owner(s), if they wish to continue to exercise using the accessory living area, must within thirty (30) day of the sale, submit a sworn and notarized written statement to the Building Inspector stating that they will occupy either the principal dwelling or the accessory apartment on the premises as their primary year-round residence for a minimum of two years.”

Option 3:

- If the City Council and Planning Board are not in favor of Option 1 or 2, another option is to revise the language to allow for temporary absences.
- Allowing for temporary absences only mitigates the concern of absentee landlords. If this option is preferred, please note that accessory units would be the only type of home where long term rentals are limited based on owner-occupancy.
- Below is draft language for Option 3:
 - “The owner of the property on which the accessory apartment is to be created shall occupy one of the dwelling units, except for temporary absences as provided herein.
 - Temporary absence of owner. An owner of a property containing an accessory living area who is to be absent for a period of less than two years may rent the owner's unit as well as the accessory living area during the temporary absence provided:
 - Written notice thereof shall be made to the Building Inspector on a form prescribed by him/her.
 - The owner shall be a resident on the property for at least two years prior to and between such temporary absences.”
- Option 4:

Revise the number of years, perhaps increase to five years. Please note that if the City Council and Planning Board would like an increased timeframe and a successive process, the language from Option 2 would also need to be included.

7 Would a family member of the owner satisfy the owner occupancy requirement?

As currently written, no. However, a family member of the owner on record would likely resolve the concern of an absentee landlord. Staff recommends that the City Council and Planning Board consider allowing a family member of the owner on record to satisfy the owner occupancy requirement.

8 It was suggested that there should not be a net loss of caliper inches of trees greater than a certain number of inches, for example 8". If there is a net loss then the applicant should contribute funds per the Tree Warden to City Tree Fund for offsite replacement.

The proposed ordinance does not allow a net loss of trees to be removed, unless a waiver is approved by means of a special permit through the Zoning Board of Appeals. Criteria is included for the Zoning Board of Appeals to consider including: the species of the tree, health of the tree, and whether the tree will be replaced elsewhere or if a contribution to the tree fund will be provided. The specific species, tree health definition, replacement location and funding are not specifically defined in order to provide flexibility.

Criteria for the loss of trees can be added. Here is some language to consider:

- Change 4.B. to “There shall not be a net loss in the caliper of private trees greater than 8” in width in diameter measured at breast height (DBH) at 4.5’ from ground unless otherwise waived by the Zoning Board of Appeals.”

and the following language could be added to section to 5.B. if the City Council and Planning Board find it necessary:

- The Zoning Board of Appeals shall not take action on the accessory living area until it has received a recommendation from the Tree Warden.

- 9 There was a suggestion that the parking minimum not be excessive, and that a parking maximum should be added but it also should not be excessive, specifically no more than one off street space shall be created as part of this effort. It was also noted that the current code stipulates a maximum 20' cumulative driveway frontage for each parcel, enforceable by the Building Inspector; however, it was brought to staff's attention that there are two recent examples where new drives were permitted in excess of this, so some consideration of expressly spelling out no secondary driveways/curb cuts exceeding this maximum, and compliance with the already established 20' maximum width was suggested.

Parking Minimum:

The proposed ordinance has a parking minimum of one space for the accessory unit, in addition to what is required for the primary unit(s). It also allows for flexibility to reduce the minimum at the discretion of the Zoning Board of Appeals if specific criteria can be met. Not having enough parking was the number one concern that community members shared about the accessory dwelling units; however, flexibility should be allowed in the event certain criteria can be met, e.g. if there is a surplus of off-street parking or if the home is within walking distance to the commuter rail. For that reason, staff recommends not changing the parking requirements proposed in the ordinance.

If the City Council and Planning Board do not agree with the language as proposed and want less parking, another option is to reduce the parking minimum to .5.

- o The zoning ordinance requires 1.5 spaces per dwelling unit. The .5 fraction is rounded up to 1. The second column in the chart below shows how many parking spaces are required for a primary home (single-family through four-family).
- o The third column illustrates how many parking spaces would be required if the homeowner added an accessory living area (under the proposed amendment of 1 space).
- o The last column shows how many spaces would be required if the accessory living area parking requirement was reduced to .5.

Type of Home	Parking required without an accessory living area	Total parking if 1 space is required for the Accessory Living Area	Total parking if ½ space is required for the ADU
Single-family	1.5=2	2.5=3	2
Duplex	3	4	3.5 = 4
Three-Family	4.5=5	5.5=6	5
Four-family	6	7	6.5 = 7

Parking Maximum:

Parking maximums are a larger policy issue than this ordinance. It seems unfair to set a maximum for this use but not for other residential uses, particularly since this is for an accessory use to a primary residential use.

Curb Cut Limits:

Pursuant to Section 5.1.5.6 (c) of the Salem Zoning Ordinance, the widths of entrance and exit drives shall be a maximum of twenty (20) feet at the street lot line in residence districts and thirty (30) feet in business and industrial districts. Approval from the Zoning Board of Appeals would be required to exceed the maximum. Staff recommends not explicating stating no secondary driveway or curb cut shall be allowed because when a standard is explicitly prohibited a variance cannot be sought. It would not be fair to take an owner's opportunity to apply for a variance.

- 10 It was suggested that an emphasis be added that the Building Inspector will enforce a single utility connection to the principal unit, rather than separate accounts.**

Pursuant to Section 2.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 will be the Special Permit Granting Authority". Staff is hesitant to emphasize that the Building Inspector will enforce a single requirement. Per the above referenced section, the Building Inspector must enforce all the provisions. It would be confusing as to why only one requirement is specifically identified and not the others.