

City of Salem, Massachusetts



**"Know Your Rights Under the Open Meeting Law, M.G.L. c. 30A ss. 18-25 and
City Ordinance Sections 2-2028 through 2-2033."**

The City Council Committee on Ordinances, Licenses and Legal Affairs co-posted Committee of the Whole

met in the Council Chamber on April 15, 2021 at 6:00 P.M.

for the purpose of discussing the matters(s) listed below. Notice of this meeting was posted on

April 12, 2021 at 11:06 A.M.

(This meeting is being recorded)

ATTENDANCE

ABSENT WERE: None

Committee of the Whole: Councilor Madore, Councilor Riccardi, Councilor Turiel, Councilor McCarthy, Councilor Flynn

Also in Attendance: Mayor Kim Driscoll; Amanda Chiancola, Planning Department; Tom Daniel, Planning Department

SUBJECT(S)

#68 Zoning Ordinance relative to ADU's without detached dwelling

#97 Zoning Ordinance relative to ADU's with detached dwelling

Councilor Morsillo opens the meeting by explaining that the first question discussed will be which version of the ordinance to take up for detailed discussion: #68 which does not allow new, separate structures or #97 which allows new, separate structures for affordable accessible dwelling units. Once we come to consensus on which version we support, we will go through the proposed ordinance section by section.

Councilor Hapworth states that in he would like to see the ordinance move forward with new, separate structures, but he doesn't think many at all will be built. He will agree to whatever the will of the body is.

Councilor Prosniewski thinks the new, separate structure should not go forward, since it was stricken last year. He would like to hear an argument in favor of new structures.

Councilor Turiel would like to work with the version with the new, separate structures because it gives us the flexibility to work within the 4-corners of the zoning. He would not like to see new, separate structures that only include an ADU, but would like to see it over or beside a new garage. He also thinks that the rental cap is unnecessary and would not like the city to have to police rents. He would like to see incentives to keep rents low through property tax rebates.

Councilor Flynn states that this has caused anxiety in Ward 4, especially new, separate structures.

Councilor McCarthy states that he brought the second version of the ordinance in, at the request of a constituent. It would require a special permit. He really does not have a preference one way or the other. Putting a second structure on your property will require money and space, which many do not have.

Mayor Driscoll asks for clarification on the separate structure. Councilor Morsillo clarifies that the difference is for newly built, separate structures.

Councilor Riccardi also wanted to make sure we are not striking the use of an existing accessory structure.

Councilor Prosniewski makes a motion to refer order 97, Accessory Dwelling Units with Detached Dwelling (new, detached structure) to the Council with a negative recommendation.

Councilor Dominguez asks that developers be blocked from creating ADU's. The language must be clear that this is for residents, not developers. Councilor Morsillo asks for further clarification about how he sees a developer building the ADU's, when it states that the homeowner must live on the lot. Further, the homeowner must prove they live on the premises when asking for a building permit. Councilor Dominguez is satisfied with this.

Councilor Morsillo asks Councilor Dominguez if he favors new, separate structures, and he states that he does, for flexibility.

Councilor Hapworth asks if the owner can move into the ADU and allow their children to move into the house. Ms Chiancola responds that the homeowner can live in the primary home or the ADU. The version that we are currently moving forward with does not allow the building of a new detached ADU.

Councilor McCarthy clarifies that someone can't build a new separate ADU but can put up a new garage. Can they add an ADU on the top of the garage later? Amanda responds that the accessory structure must exist as of the date of the ordinance. The detached new structure must meet the setbacks of the primary structure, it cannot follow the setbacks of accessory structures, so you need a significant amount of land.

Councilor Sargent asks about building a breezeway between the garage and the house. Ms Chiancola states that if a homeowner can meet all the dimensional standards required to add to the house, then yes, they would be allowed to create an ADU in an attached structure.

Councilor Sargent speaks about developers building a new house with an ADU, and marketing and selling it that way. Ms Chiancola thinks that adding a purchase and sale agreement to the requirements for obtaining a building permit for the ADU would allow someone purchasing a home being built to include an ADU, as long as the purchaser lives in the home.

Councilor Dominguez asks Ms Chiancola if there is a time that an owner must live in a house before building an ADU. Ms Chiancola explains that the owner must live in the home or in the ADU. Councilor Dominguez thinks this will lead to more ADU's being built than are allowed or used by residents who need them. It will not be for the need of the people but for the profit of the developers. This will affect the quality of life for Salem residents. We need a tool to control this.

Mayor Driscoll adds that there is an owner occupancy requirement for a certificate of occupancy. There is also a rent limit of 30% below Fair Market Rent. This helps our hospitality industry workers and others in the city looking for more affordable rental units. We currently have no rental caps on any rental units in the city. These will be owner occupied and rented at a lower price.

Councilor Hapworth moves to refer order 68, the ADU ordinance without new detached structures to the Council with a negative recommendation.

Councilor McCarthy suggests that we leave the order that we don't want to act on in committee rather than send one back with a negative recommendation. This will make things easier.

Councilor Hapworth states that he is comfortable with new structures for ADU's.

Councilor Morsillo clarifies for Councilor Sargent that the third row in the Accessory Uses table defines the new Detached Accessory Building, and is the major difference between the two versions.

Councilor Dominguez states that he prefers no new separate structures. This means that the consensus (Councilors Dominguez, Sargent, and Prosniewski) is to move forward with order 68, accessory dwelling units with attached structures, meaning no new detached ADU's.

The text of order 68 is now displayed for the OLLA committee to review and amend.

No changes to Section 1, table of accessory uses, moving on to Section 2.

Councilor Dominguez states that the name of the ordinance, Affordable Accessory Dwelling Units is not correct because it does not address the real need to provide truly affordable rents. He asks that we consider changing the name or changing the rent limit for the ordinance.

Ms Chiancola explains Fair Market Rents (FMR), which are set for our area. She says this is affordable because this is a 30% reduction on the FMR. These are affordable compared to market rates found on Craig's List for instance.

Councilor Morsillo speaks about how 2- and 3-family homeowners are currently providing lower rents, because these homeowners are not commercial renters. Homeowners take the time to find renters who will care for the home and fit in with the family, since they are sharing the house. ADU's will probably follow this pattern. Also, these are caps, not set rent prices.

Councilor Hapworth talks about how this is aiming to help two groups of people, the renters who will be able to rent at a lower amount and the homeowners who may benefit from creating an ADU. He does not think it should be a deeper cap than 30% below FMR and doesn't think homeowners should be burdened with checking income levels of renters. Housing Authorities have staff who perform this function, and it should not be the job of a homeowner. This will disincentivize the creation of an ADU.

Councilor Prosniewski asks for further clarification of FMR. He points out that the FMR for a 1-bedroom is \$1,924, and a 1-bedroom ADU would rent for \$1,346 at the most, which is 30% lower than FMR.

Councilor Madore expresses frustration about the discussion around affordability, after so many meetings about affordability. She points out that the FMR is the rent the commercial rental owners have to charge for affordable units. Burdening the homeowner with the responsibility of checking income levels may be too much for them to build the units.

Councilor Dominguez states that many are concerned about this ordinance, and that we should not deny the "voice of the majority." He thinks it is inappropriate to not listen to those living in R1 zones, where there are "a lot of concerns."

Section 3

Councilor Morsillo points out that the Planning Board offered a correction to 4., to change "one-half" to "one and one-half".

Councilor Sargent questions the height restriction of "(18) feet" if we are not building new structures. Ms Chiancola explains that the existing structure must conform to this dimensional standard. If the existing detached structure or the addition to a home for an ADU is outside of 18 feet, the owner would need to get a special permit. Councilor Sargent is comfortable with this.

Section 4

Ms Chiancola explains that the Planning Board recommended allowing one ADU per primary use, instead of per lot. So for a row-house with 3 principal units, and each have the space to create an ADU in their basements, they should be allowed, and not simply the first owner to submit an application. Ms Chiancola adds the following to Section 4, Purpose, D. "...one additional affordable dwelling unit per **principal dwelling**."

Councilor Dominguez questions if this will allow 3 ADU's per lot, and that this is too much. He also asks if the Building Inspector has submitted a recommendation. Councilor Morsillo states that he has not submitted an opinion and was invited to the meeting.

Councilor Sargent asks about "a proposed" principal dwelling. Ms Chiancola states that this is for someone building a new home. The application must be submitted with a purchase and sale agreement and the homeowner must demonstrate residency to obtain the certificate of occupancy. He also asks about "incidental and subordinate" and whether this refers to a separate structure. Ms Chiancola states that this refers to the ADU, not a separate structure. It refers to subordinate in size. Ms Chiancola adds "subordinate in size" to the text.

Councilor Dominguez again states that we need to hear from the Building Inspector, that it will clarify concerns of many. Can the committee request that the Mayor request the presence of the Building Inspector. Councilor Morsillo indicates that members of the Council can reach out to the Inspector to discuss the ordinance with him. Councilor Dominguez wants to keep this in committee until we hear from everyone. He is concerned that homeowners can create an ADU, move into the ADU, and

rent the home out as a short-term rental. He is concerned about the single family zone and the affects of ADU's on parking and schools. He is concerned that people from outside of Salem will build these ADU's.

Mayor Driscoll will reach out to the Building Inspector and encourages Councilors to reach out to him with questions. The last 2 Resident Surveys showed 70% favored ADU's. We are losing opportunities for Salem residents who work here and live here to remain because they are struggling with rent and housing costs. This will provide additional options for smart growth. This is a decision of the legislative body and the administration, and we have been talking about this for a while. We need to decide whether or not to move forward with this ordinance.

Councilor Morsillo points out that this ordinance is FOR the residents living in Salem, those looking for small affordable spaces and seniors wanting to stay in their home by creating a small ADU.

Councilor Dominguez again states that we need to hear from the Building Inspector, we need to know what is permitted. We need to know if this will change the character of R1. Councilor Morsillo states that Mr. St Pierre will be invited again to the next meeting, and again encourages Councilors to reach out to the Building Inspector.

Councilor Madore states that we have the experts at the meeting. We have Amanda Chiancola from the Planning Department at the meeting. And the Building Inspector has been involved in the process.

Councilor Riccardi asks about compliance with zoning. She asks about a 2-family in an R1 and how that would be handled. Ms. Chiancola explains that if the use is nonconforming, the ordinance does not say anything about use. We can't use special permits if we want to follow Housing Choice rules.

Councilor Madore asks non-conforming use. If we are silent on this, wouldn't it go to the ZBA anyway to determine non-conforming uses? Ms Chiancola states that in fact, it would be up to the Zoning Enforcement Officer. Councilor Madore feels that we need more data to fully determine how to move forward, and doesn't want to hold this up.

Councilor Hapworth asks what this will do with no added language. Ms Chiancola states that it is silent on non-conforming uses, and is therefore up to the Zoning Enforcement Officer. Councilor Hapworth doesn't think we have enough information.

Councilor Riccardi says that she spoke to the Zoning Enforcement Officer, and he explained that by not speaking to it, there is another avenue for the homeowner. In the example of the 2-family in an R1, the homeowner can go to the ZBA to change to a 3-family. She is comfortable not adding language on this.

The consensus is to leave the language as is and remain silent on use.

Councilor Morsillo notes that the Planning Board clarified language in 3., by replacing "A letter" with "Be accompanied by a letter".

Ms Chiancola explains that the Planning Board wanted to clarify that the homeowner can raise the rent annually, based on FMR numbers set each year.

Councilor Dominguez asks if a rental cap is legal. Ms Chiancola states that the City Solicitor sent an opinion on this topic to Councilors. Councilor Madore read the opinion, sent on April 8, which states that since this is part of a plan to increase affordability and when taken together with the property tax exemption this is legal. The precedent was the town of Wellfleet.

Ms Chiancola explains that the Planning Department does not recommend a parking restriction. Councilor Hapworth states that he is happy to see this. We should not be requiring homeowners to build off-street parking spaces on their property. Councilor Morsillo agrees and stated that the Planning Board strongly felt that we want to avoid paving over grass if we do not need to. *Councilor Madore states that ADU's create gentle density, and that ADU's are a green way to create housing, so we should not encourage more cars and parking spaces.*

The Planning Board recommends adding "inches" to caliper when referring to tree size. They also want the Tree Commissioner to set the price for trees, based on current prices, instead of specifying a set amount in the ordinance. Both recommendations were added.

Councilor Morsillo explains that the Planning Board wanted to make clear that all utilities are included in the rent, not in addition to the rent.

Councilor Madore again explains the need to allow owners of row-houses to each create an ADU. She points to row-houses in the McIntire district, and that ADU's are not allowed for buildings with 5+ units.

Councilor Dominguez asks about condos with 4 units, where each want to create an ADU. We need to be careful here.

Councilor Morsillo states that there are still size limits on the ADU. Councilor Hapworth adds that the condo association would also need to agree due to condo agreements.

Councilor Prosniewski asks about a 2-family which are condos. Would this allow them both to create an ADU? The 2-family becomes more than a 2-family now.

Councilor Morsillo wonders if the intent is to open it up like this. Councilor Madore sees neighbors who would like to build out the basement in their condo into an ADU for an adult child. She asks if we have an issue with who is renting these ADU's. Is the idea of more people living here a bad thing? Is having more neighbors a bad thing?

Ms Chiancola explains that the Planning Board wanted to remove restrictions on the placement of the entrance/egress. Accessibility requires flexibility and limits the ability of the homeowner to create the unit. Councilor Morsillo adds that she found this discussion in the Planning Board meeting very interesting, that they didn't want to see design and architecture decisions in a zoning ordinance. Councilor Hapworth agreed that the restriction should be removed, and let the boards deal with the design decisions.

Councilor Dominguez moves to keep this in committee to hear "from our expert, Tom St. Pierre" and move forward when we hear from him.

Councilor Morsillo asks if we can finish going through the ordinance first, then discuss how to proceed. Councilor Dominguez agrees.

Ms Chiancola explains that the Planning Board recommended extending the time allowed to respond to a violation, from 2 weeks to 30 days. Councilor Sargent is fine with the change, but suggested it would be handled differently, possibly through housing court.

Section 5 – no changes. The review is complete.

Councilor Morsillo opens the meeting up to public comment.

Jeff Cohen, 12 Hancock St, speaks about the housing crisis and his frustration that people think we already have too much affordable housing. He supports ADU's as an affordable unit. He asks that "oil" be added to the list of utilities covered by the rent for an ADU. (This was added.) He thinks some are trying to stall by insisting the building inspector be at the meeting.

End of public comment.

Councilor Morsillo explains that the City Solicitor was not able to attend the meeting at the last minute. She suggested keeping this in committee to allow the City Solicitor to review the changes. The committee can meet again next week to go over her changes.

Mayor Driscoll asks about timeline for the next meeting.

Councilor Morsillo states her intention to hold the meeting next Thursday before the City Council meeting.

Councilor Dominguez reiterates that we keep this in committee until we hear from the building inspector. Councilor Morsillo points out that his motion could leave this in committee indefinitely. Seconded by Councilor Sargent.

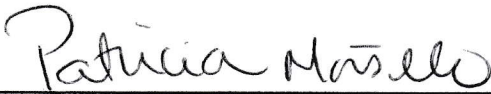
Councilor Sargent requests a clean copy of the ordinance before the meeting. Councilor Morsillo does not think Ms Rennard will be making many changes, since she has been involved all along. Councilor Sargent underscores that we need a clean copy to read through. It is agreed that a clean copy will be made available before the meeting.

Councilor Morsillo states that she does not want to vote for leaving this in committee with an end date based on a particular person being at a meeting.

Vote: 2 in favor (Dominguez, Sargent), 3 opposed (Hapworth, Prosniewski, Morsillo). Does not pass.

Councilor Hapworth moves to leave both 68 and 97 in committee. Seconded by Councilor Prosniewski. Vote: 5-0 in favor.

On the motion of C. Sargent the meeting adjourned at 8:35 P.M.



(Chairperson)