

City of Salem, Massachusetts



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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 22, 2021 at 6:00 P.M.

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

April 16, 2021 at 11:31 A.M.

(This meeting is being recorded)

ATTENDANCE

ABSENT WERE: None

Committee of the Whole: Councilor Dibble; Councilor Flynn; Councilor Riccardi; Councilor McCarthy

Also in Attendance: Beth Rennard, City Solicitor; Mayor Kim Driscoll; Amanda Chiancola, Planning Department; Tom StPierre, Building Inspector

SUBJECT(S)

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

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

Councilor Morsillo, Chair, begins with a review of the work done at the previous OLLA meeting. First, by consensus, the committee decided to move forward with Order #68, which does not include new, detached structures for ADU's. The rest of the previous meeting reviewed the recommendations from the Planning Board and reviewed the ordinance language section by section.

The purpose of this meeting is to review the recommendations from the City Solicitor and to review any further questions from the committee.

Ms Rennard shows her added definition for Principal Dwelling Unit, with an example. "Principal Dwelling Unit: A dwelling unit permitted as a principal residential use, under Section 3, Table of Principal and Accessory Use Regulations. By way of example a single-family home permitted pursuant to Section 3 shall comprise of one principal dwelling unit, whereas a two-family home permitted pursuant to Section 3 shall comprise of two principal dwelling units. An accessory dwelling unit shall not be considered a principal dwelling unit."

She also points out a change that combines sub-paragraphs H. and J. to further expand on the row-house situation. "H. No more than one (1) affordable accessory dwelling unit shall be permitted for each principal dwelling unit and at least one (1) owner of the residence in which the affordable accessory dwelling unit is created shall reside in one (1) of the dwelling units, either the principal or accessory unit created therein, 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, or a purchase and sales agreement and for whom the dwelling shall be the primary residence as evidenced by voter registration, tax return or other documentation demonstrating primary residence." Letter J was moved to H.

Ms Chiancola adds further clarification on row houses and adds a clarification about ADU's built during the construction of a new house. A purchase and sale agreement is an option for proof of ownership for the building permit for the ADU.

Councilor Dibble questions whether the owner of a house being built would necessarily be required to live in the home. Ms Rennard explains that the ADU shall be discontinued if the owner does not live on the premises. Ms Chiancola further explains that the certificate of occupancy can be held until it is demonstrated that the owner lived in the home. Ms Rennard feels comfortable that the termination clause covers the issue well.

Councilor Dibble expresses that there should only be one ADU per lot. He is concerned about condos all creating ADU's.

Councilor Dibble states that he would like to add back in the restrictions on where entrances and egresses can be located.

Mayor Driscoll suggests section H should include a clear statement that owner occupancy is required for any ADU on the premises. The following is added to H.: "Owner occupancy is required for an affordable accessory dwelling unit to be permitted." Councilor Dibble agrees that this tightens up the language.

Councilor Dominguez wants to clarify the parking restrictions. Councilor Morsillo explains that parking restrictions were removed. The original ordinance did not require parking for an ADU within one-half mile of public transit. This left basically two small areas of the city. The Planning Board felt that this would result in homeowners paving over grass to create off-street parking for an ADU resident which would be detrimental to the environment and the neighborhood. The Planning Board felt strongly that parking should not be restricted. Councilor Morsillo felt strongly that homeowners will be conscious of how tenants will impact the neighborhood.

Councilor Dominguez further questions why we are not requiring parking restrictions in dense neighborhoods. Councilor Morsillo offers that we cannot assume that all renters come with a car, and we don't currently restrict how many cars a homeowner has.

Councilor Prosniewski also has a reservation about the parking but has come to an understanding that we cannot really legally restrict parking in areas of the city. If a family has 3 children and everyone has a car, we do not restrict this. In addition, many of our 3 and 4 family homes are not owner occupied and therefore cannot build ADU's. He thinks the parking restriction is not enough to impact any particular neighborhood.

Councilor Hapworth adds that most of the research shows that providing parking increases the cars on the road and we need to disincentivize it. Also, the most successful example of ADU's is Portland, Oregon, at 2.4% of the housing stock. He would be shocked if we came anywhere close to this number because of the lack of land and the restrictions in the ordinance.

Councilor Sargent points out that the winter always brings issues with parking, especially in the dense areas.

Councilor Morsillo offers language that Ms Chiancola crafted to add to Section 5. Requirements: "C. The affordable accessory dwelling unit shall not be considered a dwelling unit for the purpose of Section 5.1 Required Parking." This serves to clear up the language in that section of the ordinances.

Councilor Dibble asks for an opinion on H, ending in "be permitted". He would like to add that this continue while the ADU is in existence. He would also like a motion to add the language about where an entrance and egress should be placed.

Councilor Dominguez makes a motion to add the language back regarding the placement of the entrance and egress for an ADU. He would also like to hear from the Building Inspector.

Councilor Morsillo reads the original wording for entrances and egresses: "Entry shall be located through existing entry or on the back or side of the main dwelling. Egress access shall be located on the side or rear of the building so that visibility from public ways is minimized."

Councilor Sargent seconds the motion to add this language back in to the ordinance.

Councilor Prosniewski asks why it was removed. Councilor Morsillo explains that the Planning Board felt strongly that design decisions should not be included in zoning ordinances, that each home in Salem is unique in its architecture and where an ADU would be placed. If an ADU is being designed for an elderly relative, and if the best and most accessible place for the entrance is in the front of the house, maybe near a large garage door, that a restriction on placement would not be in the best interest

of the homeowner. A homeowner would not make a design decision that would make their home less attractive to a future owner.

Councilor Sargent feels that this makes sense for a first-floor entrance, but questions whether a front or side exterior stairway should be allowed.

Councilor Hapworth generally feels that design decisions should not be a part of the ordinance, but a stairway placement could be restricted and would be reasonable to include. Councilor Prosniewski suggests a special permit for an external stairway placement in the front. But he does not think this will be a real issue due the low number of people who will create ADU's.

Ms Chiancola provides language for this issue for inclusion: "All stairways to the Affordable Accessory Dwelling Unit above the first floor shall be located on the rear or side of the dwelling." Councilors Sargent and Dominguez are happy with this language.

Councilor Dominguez asks Mr. St Pierre how the department will accommodate any increase in inspections due to these ADU's and enforce the ordinance. Is the department capable of managing any growth? Mr. St Pierre states that they have always been able to manage growth, and are able to go to the administration to ask for more help. He understands that there is not an expectation of a large influx of units, but if needed, they can hire more staff. Councilor Dominguez asks if they have the resources to police the new units. Mr. St Pierre states that building permit fees are supposed to offset the costs of the department, and would be used to hire more staff if necessary.

Mr. St Pierre asks for clarification on those who can't comply with every dimensional requirement. Ms Chiancola clarifies that this ordinance does not allow for new, detached units. It does allow existing, detached or new, attached structures. If it is a new, attached structure, it must meet the setbacks. If not, it must go through the existing process for a variance. For an existing, detached structure, those units must comply with the setback requirements of the principal structure not accessory structures. There is a special permit required for a an existing structure that does not comply with the setbacks of the principal structure. Mr. St Pierre asks about a 3-4 family structure looking to add an ADU in a garage. Again, if the garage does not meet the setbacks for the principal structure, a special permit is required. This is found in the Special Permit section of the ordinance.

Councilor Dominguez withdraws his motion to add the language on entrances and egresses back into the ordinance, due to the added language regarding the placement of stairways.

Councilor Hapworth moves to refer item 68 as amended to the Council with a positive recommendation for first passage, seconded by Councilor Prosniewski. The motion passes 4:1. (Councilors Domingues, Hapworth, Prosniewski, Morsillo in favor, Councilor Sargent opposed)

Councilor Hapworth moves to keep item 97 in committee. Seconded by Councilor Prosniewski. The motion passes 5:0.

On the motion of C. the meeting adjourned at 6:55 P.M.

A handwritten signature in cursive script, reading "Patricia Morsillo", is written above a horizontal line.

(Chairperson)