

CITY OF SALEM
JULY 8, 2019
JOINT PUBLIC HEARING OF THE
CITY COUNCIL AND THE PLANNING BOARD

A Joint Public Hearing of the Salem City Council and the Planning Board was held in the Council Chamber on Monday, July 8, 2019 at 7:00 P.M., pursuant to Chapter 40A, Section 5, of the Massachusetts General Laws for the purpose of two (2) separate Zoning Amendments summarized below:

1. An Ordinance Amending Zoning Section 3.2.8 Accessory Living Areas by deleting the existing text in its entirety and replacing it with a new ordinance. The existing text requires accessory units to be used solely by a family member or caregiver and for the unit to be dismantled once the need no longer exists. The proposed new ordinance is to help residents, and seniors particularly, to remain in their home by allowing small, accessory use within the same property by right, provide certain requirements are met. The proposed ordinance adds more flexibility to create housing options, removes the tenant restrictions of only a family member or caregiver (anyone may rent the unit), adds, among other things, the purpose of adding moderately priced rental units to the housing stock to meet the needs of smaller households and moderate-income households, to encourage efficient use of the city's housing supply while preserving the character of city neighborhoods, to preserve family bonds, and to permit the owner of an existing or proposed detached dwelling to construct one additional dwelling unit that is incidental and subordinate to the principal dwelling. 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. The ordinance provides procedures, application process, requirements for accessory dwelling units, Special permits and termination of use.

2. An Ordinance Amending Zoning Section 3.1 Table of Principal and Accessory Use Regulations of the City of Salem Zoning Ordinance to allow an accessory living area use in the RC, R1, R2 and R3 zoning districts.

Notice of this meeting was posted on June 24, 2019 at 2:06 P.M. and advertised in the Salem News on June 24, 2019 and July 1, 2019.

Councillors Absent:

President Stephen Dibble presided.

President Stephen Dibble introduced the members of the Planning Board.

Also, in attendance were the following:

**CITY OF SALEM
JULY 8, 2019
JOINT PUBLIC HEARING OF THE
CITY COUNCIL AND THE PLANNING BOARD**

**#370- AN ORDINANCE TO AMEND A ZONING ORDINANCE RELATIVE TO
ACCESSORY LIVING USES -SECTION 3.0 - USE REGULATIONS BY DELETING AND
REPLACING 3.2.8. ACCESSORY LIVING AREAS**

(See end of agenda for complete zoning ordinance amendment)

APPEARING IN FAVOR:

**CITY OF SALEM
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CITY COUNCIL AND THE PLANNING BOARD**

APPEARING IN OPPOSITION:

C. McCarthy	Moved hearing remain open to a date specific OR Moved Hearing be closed	VOTED
C. McCarthy	Moved that the matter be referred to the Planning Board for their recommendation (if necessary)	VOTED

**CITY OF SALEM
JULY 8, 2019
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**#371- AN ORDINANCE TO AMEND A ZONING ORDINANCE RELATIVE TO
ACCESSORY LIVING AREAS -SECTION 3.1 – TABLE OF PRINCIPAL AND
ACCESSORY USE REGULATIONS – AMENDED BY ALLOWING AN ACCESSORY
LIVING AREA USE IN THE RC, R1, R2 AND R3 ZONING DISTRICTS
(See end of agenda for complete zoning ordinance amendment)**

APPEARING IN FAVOR:

**CITY OF SALEM
JULY 8, 2019
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CITY COUNCIL AND THE PLANNING BOARD**

APPEARING IN OPPOSITION:

C. McCarthy	Moved hearing remain open to a date specific OR Moved Hearing be closed	VOTED
C. McCarthy	Moved that the matter be referred to the Planning Board for their recommendation (if necessary)	VOTED

On the motion of Councillor Furey the meeting adjourned at

P.M.

City of Salem

In the year Two Thousand and Nineteen

An Ordinance to amend an ordinance relative to accessory living uses.

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Chapter 3.0 Use Regulation is hereby amended by deleting Section 3.2.8 Accessory Living Areas in its entirety and replacing it with the following:

"3.2.8 Accessory Living Areas. Accessory Living Areas shall be allowed as provided set forth in this section.

1. Purpose.
 - A. To provide homeowners with a means of obtaining companionship, security, and services, thereby enabling them to remain in their homes and neighborhoods they might otherwise be forced to leave.
 - B. Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households who might otherwise have difficulty finding housing.
 - C. To encourage the economic and energy efficient use of the city's housing supply while preserving the character of the city's neighborhoods.
 - D. 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.
 - E. To permit the owner of an existing, or a proposed, detached dwelling to construct one additional dwelling unit. Such a use is incidental and subordinate to the principal dwelling.
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 will be the Special Permit Granting Authority.
 - 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, if required, shall:
 - a. Include a statement of the fact basis upon which the aforesaid purpose has been fulfilled.

- b. 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 to the applicant.
 - c. Include a floor plan of the accessory living area, 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 living area.
- B. The Application for the Building Permit shall:
- a. 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 to the applicant.
 - b. Include a floor plan of the accessory living area, 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 living area.

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 living area. The accessory living area shall have a dedicated off-street parking space unless otherwise waived pursuant to Section 5 of this ordinance.
- B. There shall not be a net loss in the caliper of private trees on the lot in which the accessory living area will be located unless otherwise waived pursuant to Section 5 of this ordinance.
- C. The accessory living area shall not contain in excess of 800 square feet of habitable space, unless otherwise waived pursuant to Section 5 of this ordinance.
- D. No more than one (1) accessory living area shall be located upon a single lot.
- E. 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 at the time of permit issuance and a minimum of two years thereafter.
- F. Electricity, water and gas shall be provided by a single service to both the accessory living area and the principal dwelling.
- G. 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.
- H. 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.
- I. The accessory living area shall not contain more than two (2) bedrooms.
- J. The accessory living area shall be clearly subordinate in use, size and design to the principal dwelling.
- K. The accessory living area must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
- L. There shall be no occupancy of the accessory living area until the Building Inspector has issued a certificate of occupancy that the principal dwelling and accessory living area shall be in compliance with all applicable health and building codes.
- M. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by the has not been fulfilled.
- N. By filing the Application for Special Permit or a Building Permit for an accessory living area, 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.

- O. Short term rentals are prohibited in the accessory living unit.
 - P. The accessory living 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. 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 living area 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:
 - a. The availability of surplus off-street parking in the vicinity of the use being served
 - b. The proximity to public transportation;
 - c. The availability of public or commercial parking facilities in the vicinity of the accessory living area;
 - d. 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
 - e. 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 caliper of trees on the lot in which the accessory living area 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 a tree replacement fund will be provided.
 - C. The Zoning Board of Appeals may grant a waiver to allow the accessory living area to exceed 800 square feet of habitable space, taking into consideration peculiarities of the layout of the primary dwelling.
6. Termination.
- A. 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.
 - B. Duty of Owner Upon Termination include:
 - a. The owner shall discontinue the use of the accessory living area as a separate dwelling unit.
 - b. The kitchen facilities of the accessory living area 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 living area 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."

Section 2. This Ordinance shall take effect as provided by City Charter.

In City Council June 13, 2019

Referred to the Planning Board to hold a joint public hearing

ATTEST:

ILENE SIMONS
CITY CLERK



CITY OF SALEM, MASSACHUSETTS

Kimberley Driscoll
Mayor

Office of the Mayor

June 13, 2019

Honorable Salem City Council
Salem City Hall
Salem, MA 01970

Ladies and Gentlemen of the Council:

As you know, seniors and young people alike are being priced out of Salem. With that in mind, we have collectively been working to create policies that will facilitate more housing options in our community, in particular for residents struggling to meet fast rising rents and home sales prices. Attached please find a revised Accessory Dwelling Unit (ADU) Ordinance that is designed to lift some of the barriers to creating new housing options for seniors and others in our community.

As you may recall, over a year ago, we adopted an accessory living area Ordinance with a purpose of *“providing older homeowners or other family members with a means of obtaining companionship, security, and services, thereby enabling them to remain in their homes and neighborhoods they might otherwise be forced to leave.”* To date, however, only five homeowners have used this tool, which requires accessory units to be used solely by a family member or caregiver and for the unit to be dismantled once the need no longer exists (death or relocation of family member, etc.). This requirement is very limiting and thus far, very few ADU or ‘in-law’ units have been created in Salem. The lack of housing options is not unique to seniors, of course – it is a challenge across all ages – and with that in mind, we have proposed a modified Ordinance that can better serve housing needs in our community.

Accessory dwelling units (ADUs), sometimes called in-law apartments, have a tremendous potential to increase the supply of a type of housing that Salem is in dire need of: moderately priced rental units. Not having an adequate supply of moderately priced rental opportunities places a burden on the people that we want to be able to live in Salem: seniors, child care workers, hospitality staff and service industry employees, to name a few. ADUs also offer an opportunity for homeowners to gain a rental income stream that can assist with housing costs in our City. That boost in income can help a young family buy their first home or make it feasible for a Salem senior on a fixed income to stay in their home and remain here in Salem. ADUs can accomplish this without requiring substantial new buildings or additions to traffic and infrastructure.

To this end, please find the enclosed accessory living area Ordinance that is proposed to replace the current accessory living area Ordinance. The language of the new Ordinance was developed through

many months of public forums and meetings of the Affordable Housing Task Force and members of the public. A significant difference between the current Ordinance and this proposal is that the new Ordinance adds more flexibility to create housing options. A summary of the changes proposed to the Ordinance is outlined in the table below. Please keep in mind, the purpose of the new Ordinance is to help residents, and seniors particularly, to remain in their home by allowing a small, accessory use within the same property by right, provided certain requirements are met.

<u>CRITERIA</u>	<u>CURRENT ORDINANCE</u>	<u>PROPOSED ORDINANCE</u>		
Zoning District	R1	Expand to allow in RC, R1, R2, and R3		
Purpose	Provide older homeowners or family members companionship, security and services.	Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households who might otherwise have difficulty finding housing.		
Tenant Restriction	Family member or caregiver.	Remove tenant restrictions (anyone may rent the unit).		
Owner occupied	Yes.	Required at time of permit issuance and a minimum of two years thereafter.		
Run with land or owner	Owner.	Owner for the first two years, then the land.		
Inspections	Annual certification and inspection; \$75 to maintain annually.	Subject to Sec. 2-705 (Certificate of Fitness of rented dwelling unit): <ul style="list-style-type: none"> • Inspection required every 3 years. • Inspection required for change in tenancy. • \$50 inspection fee. 		
Termination	<ol style="list-style-type: none"> 1. Two years from date of special permit if the use has not commenced. 2. Terminates upon change of owner. 3. Violation of any term of condition of the special permit. 	Upon violation of any term of the ordinance, e.g. renting as a short-term rental, or not complying with the certificate of fitness requirements).		
Short Term Rentals	NA (due to tenant restrictions).	Not allowed; amends Sec. 15-4 of the Code of Ordinances to include ADUs.		
Allowed by right (meaning no special permit is needed, however a building permit is still required)	No.	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> Yes if: <ul style="list-style-type: none"> • 2 onsite parking spaces. • No net loss of trees (measured in caliper size). • If new construction is proposed, complies with dimensional standards. • ADU does not exceed 800 square feet. </td> <td style="vertical-align: top; width: 50%;"> Special Permit from the Zoning Board of Appeals (ZBA) if: <ul style="list-style-type: none"> • less than 2 onsite parking spaces. • Net loss of trees (measured in caliper size). • If new construction is proposed and it does not comply with the dimensional standards. • ADU exceeds 800 square feet. </td> </tr> </table>	Yes if: <ul style="list-style-type: none"> • 2 onsite parking spaces. • No net loss of trees (measured in caliper size). • If new construction is proposed, complies with dimensional standards. • ADU does not exceed 800 square feet. 	Special Permit from the Zoning Board of Appeals (ZBA) if: <ul style="list-style-type: none"> • less than 2 onsite parking spaces. • Net loss of trees (measured in caliper size). • If new construction is proposed and it does not comply with the dimensional standards. • ADU exceeds 800 square feet.
Yes if: <ul style="list-style-type: none"> • 2 onsite parking spaces. • No net loss of trees (measured in caliper size). • If new construction is proposed, complies with dimensional standards. • ADU does not exceed 800 square feet. 	Special Permit from the Zoning Board of Appeals (ZBA) if: <ul style="list-style-type: none"> • less than 2 onsite parking spaces. • Net loss of trees (measured in caliper size). • If new construction is proposed and it does not comply with the dimensional standards. • ADU exceeds 800 square feet. 			

While ADUs offer tremendous potential for us to help Salem residents remain here in Salem and better afford their homes, the Ordinance before you is only one of a number of housing strategies that have either been proposed to you already or are being studied and prepared for your consideration. For example, you already have before you a proposal for a reuse special permit, an inclusionary zoning Ordinance will be submitted to the City Council later this summer, we are evaluating opportunities to leverage publicly-owned land for affordable housing, and the City, through the Salem for All Ages initiative, is studying models for home-sharing options for seniors.

I look forward to continuing this discussion regarding ADUs at the joint public hearing with the Planning Board, which is the next step for this Ordinance. If you have any questions, please contact Tom Daniel, City Planner, at 978-619-5685. Thank you for your attention to this matter and for your shared commitment to pro-actively address the growing housing affordability challenge in our community.

Sincerely,



Kimberley Driscoll
Mayor
City of Salem

City of Salem

In the year Two Thousand and Nineteen

An Ordinance to amend an ordinance relative to accessory living areas.

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 3.1 Table of Principal and Accessory Use Regulations of the City of Salem Zoning Ordinance is hereby amended by allowing an accessory living area use in the RC, R1, R2 and R3 zoning districts:

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

Section 2. This Ordinance shall take effect as provided by City Charter.

In City Council June 13, 2019

Referred to the Planning Board to hold a Joint Public Hearing

ATTEST:

ILENE SIMONS
CITY CLERK



CITY OF SALEM, MASSACHUSETTS

Kimberley Driscoll
Mayor

Office of the Mayor

June 13, 2019

Honorable Salem City Council
Salem City Hall
Salem, MA 01970

Ladies and Gentlemen of the Council:

The enclosed Ordinance is intended to accompany the accessory dwelling unit (ADU) Ordinance submitted to you under separate cover.

This Ordinance is necessary to update the Zoning table to reflect the changes proposed in the ADU Ordinance. I recommend both this Ordinance and the ADU Ordinance be advanced concurrently and adopted.

Sincerely,

Kimberley Driscoll
Mayor
City of Salem