

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. 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, detached dwelling to construct one additional dwelling unit. 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 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 and/or Building Permit, if required, 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.
 - 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 one (1) 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. For the purpose of this section, the "owner" shall be one or more individuals who holds 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.

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~~—residing in a dwelling, who hold title and for whom the dwelling is the primary residence for voting and tax purposes.~~

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F. The primary use shall not exceed five units.

G. The accessory living area shall not contain less than 350 square feet of habitable space.

H. ~~F.~~ Electricity, water and gas shall be provided by a single service to both the accessory living area and the principal dwelling.

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~~—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~~

I. ~~—shall remain in common or single ownership and shall not be severed in ownership.~~

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J. Entry shall be located through existing entry or on the back or side of the main dwelling.

K. Egress stairs shall not be permitted on the primary façade.

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L. The accessory living area shall not contain more than two (2) bedrooms.

M. The accessory living area shall be clearly subordinate in use, size and design to the principal dwelling.

N. 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.

O. 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.

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P. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by ordinance section 3.2.8 and/or special permit conditions has not been fulfilled.

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~~—By filing the Application for a Special Permit or 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.~~

Q.

R. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory living unit and in a primary residence that has an accessory living area.

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S. 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.

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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 living area.

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5-6. 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 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. 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
 - 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, up to a maximum of 1,000 square feet, taking into consideration peculiarities of the layout of the primary dwelling.

6-7. 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

Joint Public Hearing held on July 8, 2019

Advertised in the Salem News on June 24, 2019 and July 1, 2019

Continuation of Joint Public Hearing on August 15, 2019 at 7:00 P.M.

In City Council August 15, 2019

Continuation of Joint Public Hearing was closed

Referred to the Planning Board for their recommendation

In City Council September 12, 2019

Planning Board recommendation received and filed

Referred to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole

In City Council October 10, 2019

Adopted for first passage as amended by a roll call vote of 8 yeas, 3 nays and 0 absent and referred to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole

ATTEST:

ILENE SIMONS
CITY CLERK