

CITY OF SALEM  
JOINT PUBLIC HEARING  
OF THE CITY COUNCIL AND PLANNING BOARD  
November 30, 2022, AT 6:30 PM

The Salem City Council will hold Joint Public Meeting with the Planning Board on Wednesday, November 30, 2022, 6:30 P.M. for the purpose of discussing Zoning Ordinance Amendments relative to Accessory Buildings and Structures and Affordable Accessory Dwelling Units via remote and in-person participation in accordance with Chapter 40A, Section 5, of the Massachusetts General Laws and Chapter 107 of the Acts of 2022. The purpose of the public hearing is to provide interested parties with an opportunity to comment on these Zoning Amendments.

Meeting opens at 6:32 PM

City Council:

*Present:* Alice Merkl, Robert McCarthy, Caroline Watson-Felt, Leveille McClain, Jeff Cohen, Andrew Varela, Megan Riccardi, Patricia Morsillo, Ty Hapworth, Conrad Prosniewski, Domingo Dominguez (11)

*Absent:* (0)

Planning Board:

*Present:* Bill Griset, Kirt Rieder, Tom Furey, Zach Caunter, Carole Hamilton, Sarah Tarbet, Helen Sides, Jonathan Berk; Josh Turiel attended in chambers (9)

*Absent:* (0)

*Also in attendance:* Elena Eimert, staff planner; Beth Forrestal, planning assistant; Amanda Chiancola, Deputy Director of Planning and Community Development, previous Ward 7 Councilor, Steve Dibble; previous Ward 5 Councilor Josh Turiel.

**Complete Text of Zoning Ordinance relative to Accessor Buildings and Structures and Affordable Accessory Dwelling Units as follows below:**

In the year Two Thousand and Twenty-Two

**An Ordinance** to amend an ordinance relative to zoning

**Section I.** Amend Section 3.2.4 Accessory Buildings and Structures by

- a. Deleting the phrase “with the exception of setback, which shall comply with Section 3.2.4(6)” from paragraph 5.
- b. Deleting paragraph 6 in its entirety.

**Section II.** Amend Section 3.2.8(5) Affordable Accessory Dwelling Units. Requirements by

a. Deleting paragraph 5(b) in its entirety.

b. Deleting the following text from Section 5(h) “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. Owner occupancy is required for an affordable accessory dwelling unit to be permitted.”

c. Deleting the word “water” from section 5(i).

d. Inserting the word “exterior” following the word “all” in Section 5(l).

e. Deleting Section 5(m) in its entirety.

**Section III.** Amend Section 3.2.8 by deleting, in their entirety, the definitions of “Existing detached accessory building,” “Expanded detached accessory building,” and “New detached accessory building.”

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

- Councilor Morsillo: Original AADU ordinance was adopted in 2021 and Councilor McCarthy asked for data on AADU permits and what issues were recorded. On September 8, 2022, Amanda Chiancola provided the requested data for the previous twelve months to the Committee of the Whole with a new AADU ordinance. Proposed amendments were submitted to the council. There is a state regulated time frame for zoning amendments. Within fourteen days, the City Council must refer the amendments to the Planning Board and request a Joint Public Hearing (JPH). Sixty-five days from the introduction, a JPH must be held. The Planning Board will then have twenty-one days to submit recommendations back to the City Council. City Council then has ninety days from the close of the public hearing to vote on the first and second passage of the amendments.
- Amanda Chiancola, Deputy Director of Planning and Community Development shares a PowerPoint presentation on the ADU data so far. Will explain the amendments in layperson terms. The presentation can be found in the Planning Board public SharePoint file or by clicking: [JPH ADU 11302022.pptx](#)
  - The purpose of the ordinance hasn’t changed. It still is to provide affordable housing stock.
  - The permit status is 6 permits approved and 2 under review by the building inspector.
  - Only exterior stairs are now required to be on the rear or side.
  - The Housing Roadmap has identified bedroom restrictions as a fair housing violation. Families with children are a protected class. Rule still apply to the ADU.
  - The City Engineer has local regulations that require detached buildings to have own water. City Engineer agreed to have an exception for detached ADUs, as they can never be condo-ized.
  - Detached structures are currently allowed with requirements. They are treated as primary structures as far as setbacks. Proposed amendment would allow detached structures to be 5 -ft setback, same as other accessory units.
  - The owner occupancy requirement was to alleviate neighborhood concerns. Allowing non-owner-occupied homes will increase the affordable rental units stock.

- Questions from City Council

- Councilor Morsillo: Asks for the definition of “habitable space”. Does this exclude certain rooms?
  - Amanda Chiancola: It does exclude certain rooms.
- Councilor Varela: Regarding detached structures and setbacks in our current zoning, isn’t the distance required 40 feet?
  - Amanda Chiancola: 10-feet is the current distance in zoning.
- Councilor Dominguez: How are we going to address the concerns around eliminating the owner occupancy requirement? The original intent was to deal with in-law/senior apartments. Concerned that seniors will not be protected. There is a concern about our neighborhoods being used by developers and creating unwelcome changes in the neighborhoods and the most vulnerable not being protected.
  - Amanda Chiancola: The proposed amendments don’t preclude in-law apartments; this is just creating affordable rental units. The only difference is that there is no owner occupancy.
- Councilor Hapworth: Concerned that eliminating the owner occupancy requirement will move us away from the initial spirit of the ordinance and how we sold it to people. Right now if you buy a single-family home with an ADU, you must live there. How do we allow a developer to account for an ADU without opening the entire ordinance not to be owner occupied? Is permitting what is being built differently than what is permitted.
  - Amanda Chiancola: The challenge is that if an ADU is built, then there are limits on who can buy the property as it has to be owner occupied. You can tighten it with language, but it is hard to enforce because we like to see demonstration of owner occupancy. . We don’t know who the end owner of the building permit is. Developers essentially create basements that are ADU ready that the homeowner can convert if they please.
- Councilor Prosniewski: Curious about the legality of 3 beds in 900 square feet area. Does the building inspector have a minimum requirement for bedroom size?
  - Amanda Chiancola: There are health code requirements. Dwellings need a certificate of fitness from the Health Department for ADUs.
- Councilor McClain: Struggling to understand how the setbacks will be enforced. What requirements are there for a detached structure to be treated as such if we get rid of paragraph 6.
  - Amanda Chiancola: The proposed amendment reduces access to the structure to 5 feet from a 10–40-foot setback.
- Councilor McClain: Wanting to maintain a sense of ownership/accountability is an issue in my ward. The intent with the proposed amendments is to increase interest in ADUs. Which of the proposed amendments would create an impediment to creating new ADUs? What is the key amendment?
  - Amanda Chiancola: Most calls that we received were on detached structures and a little bit on owner occupancy.
  - Councilor McClain: What kind of consideration was given to addressing the switch from not allowing detached structures v. allowing them? How can we create an avenue for people to consider adding an ADU? Example, a family builds a

detached structure but waits years until they convert it to an ADU. Can we make this work where it is not dependent on this moment in time. Would allow neighborhoods to grow gradually.

- Amanda Chiancola: I tried to find examples of what would be best practices on the timeframe of the structures becoming ADUs. This is something we need to discuss.
- Councilor McCarthy: How do you address the affordability issue when the homeowner is living in the ADU?
  - Amanda Chiancola: The homeowner can live in the ADU and charge themselves \$0 while charging market rate for the main unit. This is part of the current ordinance.
- Councilor McCarthy: Interested in what the Planning Board has to say about the setbacks. Regarding the setbacks for detached structures, new structure currently conforming to zoning, but ADUs will have people and will be a primary resident for someone.
- Councilor Varela: Please clarify section 4.1, minimum 10-foot setback for detached structures.
  - Amanda Chiancola: This is specific for accessory units, not primary units. ADUs are treated as accessory units.
- Councilor Watson-Felt: From an ecological perspective, what is the impact on ground water saturation when laying a new foundation?
  - Amanda Chiancola: The Civil Engineer reviews stormwater runoff and they have requirements. There is a review, but Salem doesn't have a maximum impervious coverage regulation.
- Councilor Watson-Felt: Is this part of the approval process for ADUs?
  - Amanda Chiancola: We use ViewPoint Cloud as a permitting system, and it creates a workflow involving all permits needed for the project. This is the requirement for review. The Engineering Department looks at Federal stormwater management requirements.
- Councilor Watson-Felt: The residents of Ward 2 are concerned about the removal of owner occupancy. There are a lot of absentee landlords in W2. Do you have data on absentee landlords and are these residents more vulnerable? I have concerns that there will be ADUs without consistent maintenance.
  - Amanda Chiancola: I have no data on absentee landlords, but currently there are not a lot of places in Massachusetts that allow non-owner occupied ADUs.
- Councilor Merkl: Is this any different than how we oversee duplexes or 3 family house that are part of the naturally affordable housing stock?
  - Amanda Chiancola: The proposed ordinance treats accessory units the same as other units that don't require owner occupancy. You could build in language to that effect and allow for a timeframe, i.e., the first two years must be owner occupied.
- Questions from the Planning Board
  - Tom Furey: Speaks from own familial experience and believes this improves the human face of Salem.

- Josh Turiel: There are concerns about changing the owner occupancy requirements. Our rental stock is escalating in price, if ADUs are investor opportunities, this will not help with price increases. Owner occupancy should remain a requirement.
- Zach Caunter: No real problem with the change in owner occupancy. Does the change in owner occupancy for ADUs affect short-term rentals?
  - Amanda Chiancola: The ADU and Short-Term Rental Ordinances prohibit ADUs from becoming short-term rentals.
- Public Comment
  - Damien Jarret  
5 Hillside Avenue  
Opposed the initial passage of the ordinance with the fear of exactly this situation happening. The state has abolished the property tax regarding this, and Salem said “no”. We were offered rebates to the tune of \$47000 but we still didn’t want it. So we stick it to the residents and open us up to developers. We will have landlords trying to exploit large families by cramming them into these units. If this passes, we should abolish zoning meetings. This goes far beyond what the original intent. If the amendments pass, we should abolish zoning meetings. We need to admit that we got this wrong instead of beating a dead horse they are trying to strip back every safeguard that addressed original concerns. We need to stop changing the rules to get to what seems to be the goal of the administration which is to abolish single family zoning.
  - Steve Dibble  
47 Moffat Road  
Everyone wants affordable and safe housing. The changes proposed will promote more ADUs but not more affordable housing. ADUs don’t have property taxes and now we are offering grants to help with construction. Our taxes go up as these units are built. There is nothing about them that makes them affordable, this just jams more apartments in where they don’t belong and hurts neighborhoods. Just build affordable apartments and stop building luxury apartments
  - Polly Wilbert  
7 Cedar Street  
Concerned with the setback issues, these units are not hidden. They are visible to abutters on 3 sides. In the town of Newton, there was concern about the fact that the ADU ordinance doesn’t provide screening. The proposed setbacks are too small for Salem. The biggest problem in Salem is absentee landlords and college students. That all changed as so many units in South Salem became condos. Fear investment firms are going to buy up millions of dollars of single-family homes for investment. These affordable units don’t provide anything for Salem residents. In Newton there was the concern that seniors typically put their properties into a trust, this may require ownership to be clarified. Finally, the Gateway Center was permitted for 117 senior units and the lot is permitted and is sitting empty. 117 units, not ADUs.
    - Amanda Chiancola: Regarding putting properties into a trust, there is a declaration of the trust that identifies the trustees. We would require documentation on who can sign on behalf of the trust.

- Steven Nickerson  
5 Cedarcrest Avenue  
Primarily concerned about affordable housing. There is a lot of construction and apartments being built. And why is the Bates Complex at SSU not being used for affordable housing? Non owner occupied is a problem. And there will be parking and traffic problems. The changing of the setbacks will cause a lot of issues. WE have some group homes in our neighborhood, and this would allow them to build another building on their property. How many applications have there been? If it's only a few then why do we have to amend the ordinance? Sounds like support for this is pretty weak. If we all went with ADUs, where would the cars go?
- Judith Reilly  
20 West Avenue, U3  
In support of ADUs. There is no difference between seeing a garage out the window now and it being an apartment in the future. There is no need for screening. The more units we have the more affordable we will make Salem.
- Stacia Kraft  
140 Federal Street  
Often receives calls about selling her home – 2 calls today alone. They are anonymous numbers, and it seems developers are watching Salem and waiting to jump. How well are we vetting Air BnBs let alone ADUs. Developers want to exploit temporary housing. The AMI used to define affordable housing in Salem doesn't relate. The 60% AMI actually leads us to gentrification. Salem's AMI is more like 30%.
  - Amanda Chiancola: Salem's median income is 60% of the regional area median income. Half of the population makes less than 60% AMI and half make more. \$114000 is the average family income for metro Boston. For ADUs, we look at fair market rents. Rents are separated from household income
- Jen Lynch  
38 Charles Street  
Comfortable with the proposed changes and feels there is room for compromise. Finds that the neighborhood has improved with the variety of housing available on the street.
- Jay Witt  
*Commenter was using an older version of zoom and could not join.*
- Mariano Maesso  
41 Bellevue Avenue  
Supports ADUs, and there will not be ADUs on every corner. If there are regulations, space, good layout and parking. We need this in Salem. Rent is insanely high - \$3000 for a 2-bedroom apartment with no utilities! It is not only about senior living but about people being able to grow and love Salem.
- The Board of the Federal Street Neighborhood Association submitted a written comment that was read into the record.
- Linda Ferrarresso of 67 Aurora Lane submitted a written comment that was read into the record.

- Tim Doggett  
9 Lynn Street  
If we limit the zoning of the ADU ordinance and how it affects present zoning, does that open the window for someone to request changing the zoning for non-ADUs yielding more crowding and fewer setbacks.
  - Amanda Chiancola: If a homeowner wants to build within the existing, nonconforming, you can get a special permit. If you don't meet the underlying zoning, then you do not get the variance. 90% of current homes in Salem do not meet the required lot size. This is actually a recommendation on the housing roadmap.
- Lewis Bauer of 20 Larchmont Road submitted a written comment that was read into the record.
- Barbara Cleary of 104 Federal Street submitted a written comment that was read into the record.
- Elaine Wintman of 28 Beckford Street submitted a written comment that was read into the record.
- Elizabeth Dickson of 135 Federal Street submitted a written comment that was read into the record.
- Josiah Fisk of 358 Essex Street, U3 submitted a written comment that was read into the record.
- Lois Ferrarresso of 315 Essex Street, U3 submitted a written comment that was read into the record.
- Meg Twohey of 122 Federal Street submitted a written comment that was read into the record.

**Public comment from those on zoom continues**

- Justin Whittier  
10 River Street  
President of FSNA but speaking on behalf of himself.  
Ms. Chiancola read an example and based on what she said it is already permitted under the ordinance. It is bizarre to have her read something from someone who is in favor and not opposed to the ordinance. ADUs are already allowed in Salem. The changes are about removing the protections for neighborhoods and the benefits would flow to developers and landlords at the cost would be to the neighborhoods. We have to have tradeoffs, but this is too much cost for too little benefit. I urge you to vote against the changes on new construction and owner occupancy.
- Chair Bill Griset, Planning Board: Would like to make a public comment and take exception to Justin Whittier's suggestion that Amanda Chiancola would only read favorable letters. This is offensive.
- Mary Whitney  
356 Essex Street  
Thank you to the Ward 2 councilor for raising environmental questions. Not sure how the Civil Engineer will address this. We have to comply with federal law in Salem. There isn't enough research to support why these changes should be made. Everything we have to comply with is taken care of by a small nonprofit in Salem. Flooding in Salem is getting worse. Affordable housing is an issue but sees neighbors priced out of the city. Non-owner occupancy requirements will create market pressure to increase rents.

- Lois Ferraresso  
Lois had had excessive feedback earlier in the public comment sections. Public comment already read in by Elena Eimert

End public comment

- Councilor Merkl: Has never known renters to be detrimental to neighborhoods. Asks for confirmation that the proposed changes apply to 70% fair market rent – i.e., studios are \$1400 maximum, and a 1 bedroom is \$1500 maximum.
  - Amanda Chiancola: Those markers won't change.
- Councilor Watson-Felt: We have a lot of non-conforming uses in W2. On the zoning table with setbacks, are those B1?
  - Amanda Chiancola: Dimensional standards are in the current ordinance.
- Councilor Watson-Felt: With a five-foot reduction in setbacks?
  - Amanda Chiancola: Yes, it uses the same definition as accessory structures.
- Councilor Watson Felt: Is there an ability to remove the structure later or just with new detached construction?
  - Amanda Chiancola: The ordinance requires an attached unit to be structurally removed without a structural wall. Would have to figure out how to do that with a detached structure.
- Councilor Dominguez: Most comments have been about 2 items in particular. Can you continue with your proposed amendments without the two controversial items?
  - Amanda Chiancola: City Council can choose to accept some but not all amendments and can make changes as long as Council remains within the four corners of the advertisement.
- Councilor Morsillo: Can you discuss more about why AARP advises against tenant restrictions?
  - Amanda Chiancola: AARP doesn't explain it but interprets that: any time you add a tenant restrictions, it makes it more challenging to finance. If I am buying a home with an ADU, I may be using the rent to pay for part of my mortgage. But if I leave the property, I cannot use the rent any longer to offset costs.
- Councilor McClain: Wants the public to understand that this isn't the end of the discussion. The Planning Board will meet alone and then refer recommendations back to City Council. This ordinance directly addresses affordability in Salem. There is controversy regarding calculations, and I want to address subsidy v. affordability. Subsidies are overwhelmingly provided by State and Federal agencies. The city doesn't typically provide housing subsidies. The list for subsidies is years long. This ordinance creates opportunities for people and shouldn't pit vulnerable populations against each other.
- Councilor Morsillo: We now have two options. We can close the public hearing or keep it open. Once closed, the matter goes to the Planning Board, then back to City Council for further discussion in subcommittees. We need to have our first and second passages done within 90 days of the closure of the public hearing. There will be ample time for public comment in the future.

Councilor Riccardi moves that the public hearing be closed.

The motion to close the public hearing passes with an 11-0 roll call vote.

Councilor Riccardi moves that the matter be referred to the Planning Board for recommendations.



The motion to refer the matter to the Planning Board passes 11-0 in a roll call vote.

Chair Griset calls for a motion for the Planning Board to adjourn.

The motion to adjourn is made by Helen Sides and seconded by Tom Furey and passes 9-0 in a roll call vote.

Councilor McCarthy moves to adjourn the meeting

Approved by the Planning Board on December 15, 2022