

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO
UPDATE THE ACCESSORY APARTMENT PERMIT PROGRAM BY
AMENDING SECTIONS 1270, 1271, 3021, 3023, 3031, 3032, 3041, 3042, 3111, 3113,
AND 4201 TO PERMIT DETACHED ACCESSORY APARTMENTS**

WHEREAS, Town Council believes that expanding the availability of accessory apartments, with appropriate regulation and while retaining key program components such as owner occupancy, can aid in furthering community goals of housing choice, housing affordability and aging-in-place; and

WHEREAS, Town Council has directed staff to study the potential for permitting detached accessory apartments in residential neighborhoods;

WHEREAS, the public necessity, convenience, general welfare, and good zoning practice so require.

BE IT ORDAINED by the Council of the Town of Blacksburg:

1. That the Zoning Ordinance is amended and re-ordained by amending §§ 1231, 1270, 1271, 3021, 3023, 3031, 3032, 3041, 3042, 3111, 3113 and 4201, as follows:

**ARTICLE I. ADMINISTRATION
DIVISION 13. NONCONFORMITIES**

Sec. 1231 Nonconforming lots of record.

(a) In any district in which single-unit dwellings are permitted, a single-unit dwelling and customary accessory building may be erected on any single undeveloped lot of record at the effective date of this division or amendments thereto; but only if such lot cannot be combined with another adjoining undeveloped lot or lots under the same ownership in order to establish a lot or lots conforming to the requirements of this division. *Accessory apartments may also be erected on such lots if the requirements of the accessory apartment permit program, as set out at Zoning Ordinance §§ 1270, 1271 and 4201, can be met.*

This section shall apply even though such lot fails to meet the applicable zoning district requirements for area or frontage, or both; provided that all requirements, except area or frontage of the lot, or both, shall be complied with as for other residences in the same district.

(b) If two (2) or more undeveloped lots or combinations of developed and undeveloped lots and portions of lots with continuous frontage under single ownership are of record at the effective date of this ~~chapter~~ ~~[Appendix]~~ *section* or amendments thereto, and if all or parts of the

lots do not meet the minimum requirements for lot frontage and area herein established, the lots involved shall be considered an undivided parcel for the purposes of this division, and no portion of such lots or parcels shall be used or sold in a manner to diminish compliance with the requirements of this division as to lot frontage and area.

(c) If two (2) or more lots or portions of lots with continuous frontage under single ownership are of record at the effective date of this chapter [Appendix] or amendments thereto, and if all or parts of the lots are required for the existing structure or structures to meet the minimum site development regulations herein established, the lots involved shall be considered an undivided parcel for the purposes of this division, and no portion of such lots or parcels shall be used or sold in a manner to diminish compliance with the requirements of this division.

ARTICLE I. ADMINISTRATION

DIVISION 17. ACCESSORY APARTMENT PERMIT PROGRAM

Sec. 1270 Purpose and findings.

(a) Accessory apartments are not “by right” uses and have not been permitted for many years. However, the Blacksburg Town Council has determined that, under certain circumstances, it may be appropriate to allow an accessory apartment in conjunction with a detached single family home through an annual permit program. Done successfully, an accessory apartment permit program can promote home ownership, owner residency, affordable housing, aging in place, mixed age and income neighborhoods, *providing housing for young professionals and critical segments of the workforce* ~~and university related student or faculty housing.~~

(b) The majority of Virginia Tech students live off campus in different types of housing. Based on its experience with absentee landlords and single family homes rented by students, the Blacksburg Town Council has found that owner occupied properties in the town are better maintained and ~~cause~~ *result in* fewer problems in residential neighborhoods. The owner occupancy requirement in this accessory apartment permit program exists as a counterbalance to prevent neighborhood problems such as noise and trash that may be created by the additional housing that will be permitted. Owner occupancy is also consistent with a primary goal of this program, which is to provide aging-in-place-options. It is for these reasons that the Town Council finds that the owner occupancy requirement will prevent the deterioration of neighborhoods and is substantially related to land use impact, making it a land use regulation instead of a regulation of the land owner. Because of the importance of owner occupancy in the Town’s creation of this accessory apartment permit program, this requirement shall not be considered to be severable.

(c) Because of these concerns about residential over-occupancy and impacts on neighborhood character, accessory apartments shall be permitted only under the conditions set forth in this division and Zoning Ordinance § 4201.

Sec. 1271 General Provisions.

(a) Accessory apartments are permitted only in the RR-1, RR-2 and R-4 zoning Districts *or as approved as part of a rezoning to the PR zoning district. Accessory apartments are only allowed on lots with a detached single family home and only one accessory apartment per lot or parcel is permitted.*

(b) Lots that are non-conforming with regard to minimum lot size are eligible for an accessory apartment provided that ~~no additions or changes to the footprint of the existing structure occur~~ *all other standards in the Zoning Ordinance are met and the use does not increase any non-conformities.*

(c) The primary dwelling unit or accessory apartment must be owner occupied.

(d) The owner must reside on the premises for at least nine calendar months cumulatively in a calendar year. If an owner will be in residence less than nine months in any calendar year, then the Planning and Building Department must be informed and the owner will not be permitted to rent the accessory apartment during that year.

(e) No accessory apartment may be created or rented without first obtaining a permit from the Town of Blacksburg. Applicants may register at any time during the calendar year. Registration must be renewed annually. The permit does not run with the land, so any new owner must complete an application for rental of an accessory apartment.

(f) The apartment permit registration program does not supersede any applicable private deed restrictions or covenants governing a property.

(g) *Accessory apartments may only be rented by the unit. The accessory unit cannot be rented by the bedroom.*

~~(g)~~ (h) *The accessory apartment permit program is intended to further the goals set forth in § 1270, not to facilitate the development of homestay units (regulated in Chapter 6 of the Town Code) or other forms of short-term rentals. Therefore, accessory apartments approved under this division may not be used thereafter as homestay units or short-term rentals, regardless of the apartment's status in the accessory apartment program. Owners participating in the accessory apartment permit program are not eligible to rent the property as a homestay (regulated in Chapter 6 of the Town Code).*

~~(h)~~ (i) The owner shall sign an affidavit before a notary public stating that he or she occupies either the primary dwelling unit or the accessory apartment. The affidavit will also state that, should the owner choose not to participate in the program in the future, the unit will not be rented as an accessory apartment. Upon the sale of the property, a new owner shall be required to register and sign a new affidavit.

(j) As part of the accessory apartment permit program, property owners will consent to comply with the applicable standards of the program and consent to inspection at reasonable times by Town staff for compliance.

(k) Failure to comply with the standards of the program, including all occupancy and use and design standards, may result in revocation of approval for the accessory apartment and the use must cease and no further application will be approved for a period of one year from the revocation. A written revocation notice will be sent to the property owner. Appeal of a revocation will be heard before the Board of Zoning Appeals in the manner outlined in Zoning Ordinance § 1243, *et. seq.*

(l) "Owner" means the following:

- (1) An individual who possesses, as shown by a recorded deed, fifty (50) percent or more ownership in the property, and occupies the dwelling unit with a bona fide intent to make it his or her primary residence; or
- (2) An individual who is a trustor of a family trust that possesses fee title ownership to the property and was created for estate planning purposes by one (1) or more trustors of the trust. Such individual must occupy the dwelling unit owned by the family trust with a bona fide intent to make it his or her primary residence. Each living trustor of the trust shall so occupy the dwelling unit except for a trustor who temporarily resides elsewhere due to a disability or infirmity. In such event, the dwelling unit shall nevertheless be the domicile of the trustor during the trustor's temporary absence.
- (3) A person who meets the requirements of the preceding sub-sections (1) and (2) shall not be deemed an owner occupant if the property on which the dwelling unit is located has more than one (1) owner and all owners of the property do not occupy the dwelling unit with a bona fide intent to make the dwelling unit their primary residence.
- (4) A claim that a person is not an owner occupant may be rebutted by documentation, submitted to the Planning and Building department, showing that the person who occupies the primary dwelling unit has a bona fide intent to make that unit his or her primary residence as indicated by the following documents that show such person:
 - (i) is listed as a primary borrower on documents for any loan presently applicable to the property where the dwelling unit is located;
 - (ii) has claimed all income, deductions, and depreciation from the property on his or her tax returns for the previous year;

- (iii) is the owner listed on all rental documents and agreements with tenants who occupy the dwelling unit, including any accessory apartment;
 - (iv) is the owner listed on all insurance, utility, appraisal, or other contractual documents related to the property; and
 - (v) is a full-time resident of Virginia for state income tax purposes.
- (5) Any person, or group of persons, who fails, upon request of the Planning and Building department, to provide any of the documents set forth in the preceding sub-sections or who provides a document showing that ownership of a dwelling unit is shared among persons who do not all occupy the dwelling unit shall mean, for the purpose of this section, that such person or persons shall not be deemed an “owner” for the purposes of this section.

⊕ (m) Before *an accessory apartment* permit is issued and a certificate of occupancy permit is issued, the owner shall sign a notarized owner occupancy covenant ~~that will be~~ *and have it* recorded in the Montgomery County Circuit Court land records. This covenant is intended to make the requirements of this program clear to prospective purchasers.

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ARTICLE III. DISTRICT STANDARDS
DIVISION 4. R-4 LOW DENSITY RESIDENTIAL DISTRICT

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Sec. 3042 – Site development regulations.

- (e) The maximum dwelling unit occupancy shall be a family plus two (2) persons unrelated to the family; or no more than three (3) unrelated persons. For a detached single-family dwelling with a nonconforming accessory apartment, or an accessory apartment as allowed through the accessory apartment permit program, occupancy shall be ~~figured~~ *calculated* cumulatively including both the single-family dwelling and the accessory apartment for a total not to exceed three (3) unrelated persons.

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ARTICLE III. DISTRICT STANDARDS
DIVISION 11. PR PLANNED RESIDENTIAL DISTRICT

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Sec. 3111 - Permitted Uses.

- (a) The following uses are permitted in the Planned Residential district. However, no use shall be permitted except in conformity with the uses specifically included in the final master plan approved pursuant to Section 1162, "Planned Zoning Districts."

Residential

Home Occupation

Multi-family Dwelling

Single-family Dwelling, Attached

Single-family Dwelling, Detached

Townhouse

Two-family Dwelling

Accessory Apartments as an allowed use and approved as part of a rezoning to the PR district and as permitted by §1270 and in compliance with §4201.

Civic*

Community Recreation

Day Care Center

Educational Facilities, Primary/Secondary

Family Day Care Home

Life Care Facility

Open Space

Public Parks and Recreational Areas

Public Recreation Assembly

Religious Assembly

Safety Services

Shelter

Utility Services, Minor

Office*

Financial Institutions (without drive-through)

General Office

Medical Office

Commercial*

Gasoline Station

Grocery Store

Neighborhood Convenience Store

Personal Services
Restaurant, Small
Miscellaneous
Accessory Structure

*Without external speakers only. Any use which incorporates an external speaker may be permitted only with a conditional use permit.

Sec. 3113 - Site Development Regulations.

(h) For multifamily dwellings and townhouses, the maximum dwelling unit occupancy shall be a family, plus two (2) persons unrelated to the family; or no more than four (4) unrelated persons. For detached and attached single-family dwellings and two-family dwellings, the maximum dwelling unit occupancy shall be a family, plus two (2) persons unrelated to the family, or no more than three (3) unrelated persons. *For a detached single-family dwelling with an accessory apartment (as approved in a PR rezoning and as allowed through the accessory apartment permit program), occupancy shall be calculated cumulatively, to include both the single-family dwelling and the accessory apartment, for a total not to exceed three (3) unrelated persons.*

ARTICLE IV. USE AND DESIGN STANDARDS

DIVISION 2. RESIDENTIAL USES

Sec. 4200 Residential uses.

Sec. 4201 Accessory Apartment.

(a) All accessory apartments subject to these Use and Design Standards shall be registered through the accessory apartment permit program pursuant to Zoning Ordinance § 1271 *and meet all requirements in this section.*

(b) General standards:

(1) *Use and occupancy of each dwelling unit must comply with all applicable building code regulations.*

~~(2)~~ (2) *The accessory apartment shall be clearly secondary and accessory to the primary dwelling unit as to location, height, square footage, floor area ratio, and building coverage and in keeping with the character of a single family neighborhood. and shall not change its character as a detached single family residence. The accessory apartment must be integrated into or be compatible with the primary structure using features such as roof lines, exterior materials, window patterning or exterior color.*

- ~~(2) The accessory apartment must be within the primary structure. The accessory apartment shall not be located in a separate freestanding structure.~~
- ~~(3) The maximum size of an accessory apartment shall be 800 square feet.~~
- (3) *No accessory apartment shall exceed twenty-eight (28) feet in height, or twenty (20) feet in height at the eaves at the setback line, or the highest point of the primary dwelling unit roof. Height shall be measured in accordance with Zoning Ordinance § 2301 and the measurement shall be taken at the adjoining grade of the front entrance for the primary structure and for the accessory apartment.*
- (4) The accessory apartment shall have working smoke detectors in each room of the apartment. Carbon monoxide detectors are required with the use of gas heating or appliances.
- (5) The accessory apartment shall have an egress window in any sleeping area.
- (6) No commencement of use of an accessory apartment shall occur until the property owner has an approved accessory apartment permit from the Town of Blacksburg and any building permits have been issued for construction related to the accessory apartment and the work completed and approved by the Town.
- (7) The underlying zoning district development standards for lot coverage, ~~height, setbacks and floor area ratio~~ that apply to the primary dwelling shall also include the accessory apartment in the calculations of ~~these~~ *this* standards.-
- (8) Off-street parking is not required for the accessory apartment. If any parking is proposed, the parking shall be of a pervious surface such as pervious pavers, pervious concrete or other pervious material as approved by the Zoning Administrator.
- (9) Occupancy standards are set forth in the underlying zoning district regulations.
- (c) *In addition to the general standards set forth above in paragraph (b), the following shall apply to interior (attached) accessory apartments:*
- (i). *The accessory apartment must be entirely contained within the primary structure or an addition in accordance with these regulations.*

- (ii). *The gross floor area of the accessory apartment shall not exceed eighty (80) percent of the gross floor area of the primary structure in which it is located. In no case shall the maximum square footage exceed 1,000 square feet.*
 - (iii). *The square footage of the accessory apartment shall count in the calculation of floor area ratio.*
 - (iv). *Setbacks for the accessory apartment shall comply with setbacks for the zoning district.*
- (d) *In addition to the requirement set forth above in paragraph (b), the following requirements apply to detached (exterior) accessory apartments:*
- (i). *The gross floor area of the accessory apartment may not exceed eighty (80) percent of the gross floor area of the primary structure, or a maximum 1,000 square feet of gross floor area. For a garage apartment, the gross floor area includes the square footage of the garage.*
 - (ii). *The exterior accessory apartment shall be located behind the front building line of the primary structure in the side or rear yard.*
 - (iii). *The total footprint of all accessory structures (including sheds, detached garages, etc.) shall not exceed thirty (30) percent of the rear yard area. The rear yard area includes the distance from the back of the primary dwelling unit to the rear yard property line and the distance between the side property lines.*
 - (iv). *The square footage of the detached accessory apartment shall not count in the calculation of floor area ratio.*
 - (v). *The setback requirements of the underlying zoning district shall be met on all public street frontages. However, if the accessory apartment is not located in a yard adjacent to a public right of way the minimum setbacks shall be as follows:*
 - (1) *Side yard: Seven and one half (7 1/2) feet.*
 - (2) *Rear yard: Seven and one half (7 1/2) feet.*

(vi). *Patios, decks, and balconies for the accessory apartment shall not be located on either of the two sides of the accessory dwelling unit that are closest to adjoining property owners.*

~~(10)~~ (e) Incorporation of universal design standards.

To promote aging-in-place, ~~and~~ housing for differently-abled individuals, *and to create units that can serve the future housing needs of the owner, family members or renters*, universal design features such as zero step entry, wider doorways and hallways, no step or low step showers and universal design door handles are ~~required in~~ *encouraged in all* accessory apartments. ~~based on the chart below. Any appeals to the applicability of these requirements shall be submitted to the Planning and Building Department with the accessory apartment permit application and will be reviewed and acted upon by the Planning Commission.~~

Design Feature Required	Use of existing finished space	Conversion of unfinished to finished space	New Constructi on
Universal design door handles	X	X	X
Zero step entry+		X	X
36" wide entry doorway+			X
36" wide hallways+			X
No step or low step shower+		X	X
Sleeping area, full bathroom and kitchen on same level+		X	X

+ Excludes basement apartments where steps are needed to access the apartment.

2. That this ordinance shall be effective on and after the date of its adoption.

Mayor

ATTEST:

Town Clerk

Introduction: _____

Public Hearing & Action: _____

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL SUFFICIENCY:

Director of Planning and Building

Town Attorney