

Ordinance 1816

AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO ESTABLISH AN ACCESSORY APARTMENT PERMIT PROGRAM BY ADDING NEW SECTIONS 1270 AND 1271, AMENDING SECTIONS 2103, 3021, 3023, 3031, 3032, 3041, 3042, AND ADDING NEW SECTION 4201

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

WHEREAS, Town Council believes that accessory apartments, with appropriate regulation and owner occupancy, can aid in furthering community goals of housing affordability and aging-in-place; and

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 reordained by adding new §§ 1270 and 1271, amending §§ 2103, 3021, 3023, 3031, 3032, 3041, 3042, and adding new § 4201, as follows:

***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, 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 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.*

(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.*

(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) *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) *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.*

(i) *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.*

(j) *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.*

- (k) *"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.*

*(l) Before a permit is issued, the owner shall sign a notarized owner occupancy covenant that will be recorded in the Montgomery County Circuit Court land records. This covenant is intended to make the requirements of this program clear to prospective purchasers.*

**Sec. 2103 Definitions of terms and use types.**

For the purposes of this ordinance, the words and phrases listed below in this section shall have the meanings described below:

ACCESSORY APARTMENT—(See Residential Dwelling).

\* \* \*

RESIDENTIAL DWELLING—A building or part of a building, containing living, sleeping, housekeeping accommodations, and sanitary facilities for occupancy by one (1) or more individuals or families. The following are included as residential dwelling types:

ACCESSORY APARTMENT—A secondary dwelling unit or units established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached structure or structures on the same lot.

*ACCESSORY APARTMENT PERMIT PROGRAM - The program established by the Town of Blacksburg for the purpose of regulating accessory apartments created after April 15, 2017. This program does not include lawful non-conforming accessory apartments created prior to 1975 that are documented on the list maintained by the Planning and Building Department.*

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**ARTICLE III  
DIVISION 2. - RURAL RESIDENTIAL 1**

**Sec. 3020 Purpose.**

The purpose of the Rural Residential district is to provide for residential development at a scale intended to conserve the rural character of the district. Development within the Rural Residential district is intended to promote the following goals and objectives. Development proposals shall be evaluated for their adherence to these goals:

- (1) Conservation of agricultural and forestal lands, including farm fields and pastures.
- (2) Conservation of natural resources including wetlands, floodplains, natural drainage ways, aquifer recharge areas, existing tree cover, steep slopes, ridge lines, hilltops, wildlife habitats, deer wintering areas, stream valleys, locations comprising scenic views or scenic view corridors, and other outstanding natural topography.
- (3) Conservation of a unified open space area.
- (4) Creation of residential developments on a traditional rural scale, with small villages surrounded by agricultural, forestal, or open space lands.

(5) Flexibility and creativity in the design of residential subdivisions, with less suburban-style sprawl and less consumption of open land.

These measures will prevent soil erosion by permitting development according to the nature of the terrain, provide larger open areas with greater utility for rest and recreation, and encourage the development of more attractive and economic site design. They will create a convenient, attractive, and harmonious community, and facilitate the provision of parks, forests, playgrounds and other recreational facilities. These goals are intended to preserve existing agricultural, forestal and other lands of significance for the protection of the natural environment.

**Sec. 3021 Permitted uses.**

The following uses and structures are permitted by right subject to all other applicable requirements contained in this Ordinance:

Agricultural and Forestry Use Types:

Agriculture

Farm Employee Housing

Forestry Operations

Kennel, Private

Stable, Private

Stable, Commercial

Wayside Stand

Residential Use Types

Home Occupation

*Accessory Apartment as permitted by §1270 and in compliance with § 4201*

Single-family Dwelling, Detached

Single-family Dwelling, Attached

Townhouse

Two-family Dwelling

Civic Use Types

Community Recreation

Open Space

Public Parks and Recreational Areas

Utility Services, Minor

Miscellaneous Use Types

Accessory Structures

Amateur Radio Towers

**Sec. 3023 Development standards.**

Each residential lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land. Residential lots shall be designed in such a way as to promote the purposes of ~~this chapter [Appendix]~~ *the Zoning Ordinance*. The following minimum standards shall apply.

(a) Density

Maximum density shall be one (1) dwelling unit per acre, excluding acreage within the 100-year floodplain. *Accessory apartments shall not be considered in the density calculation.*

(b) Minimum Lot Requirements:

Area: No minimum lot size

Minimum frontage: Twenty (20) feet on a publicly owned and maintained street

(c) Minimum Setback Requirements:

Front yard:

(1) For lots adjoining minor streets:

Building height 16—35 feet	13 feet
Building height 15 feet or less	8 feet

(2) For lots adjoining collector roads:

35 feet from the abutting right-of-way of any collector road of fifty (50) feet or greater in width;	60 feet from the center line of any collector road right-of-way this is less than 50 feet in width.
Rear yard:	
Principle structures	20 feet
Side yard:	10 feet, except on corner lots, a side yard facing the street shall be 20 feet
Detached garages located at the rear of a lot (i.e. behind the rear building line) and attached to a similar garage on a contiguous lot may be located within the side yard setback.	

(d) Maximum Floor Area Ratio

Maximum floor area ratio shall be 0.30, except Townhouse maximum floor area ratio shall be 0.50.

(e) Maximum Height of Structures, except church spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennae, and radio aerials are exempt: Thirty-five (35) feet. Utility poles may have a maximum height of forty-five (45) feet.

- (f) 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 accessory apartment as allowed through the accessory apartment permit program*, occupancy shall be ~~figured~~ *calculated* cumulatively, *to include including* both the single-family dwelling and the accessory apartment, for a total not to exceed three (3) unrelated persons.
- (g) All utility lines, electric, telephone, cable television lines, etc., shall be placed underground.

**Sec. 3024 Minimum open space.**

A minimum of fifty (50) percent of the total area shall be designated as permanent open space upon the first subdivision of any parcel subsequent to the creation of this district, or upon the approval of a conditional use permit. This requirement shall be in lieu of the requirements of Division 10 of the Blacksburg Subdivision Ordinance.

**DIVISION 3. RURAL RESIDENTIAL 2**

**Sec. 3030 Purpose.**

The purpose of the Rural Residential 2 District is to encourage high-quality planned residential development, to preserve agricultural and forestal lands, to maximize the conservation of scenic and recreational open space, and to implement the Comprehensive Plan through the use of open space design and a density bonus system. In reviewing an application for RR2 zoning, the Planning Commission and Town Council should consider, among other things: (Ord. No. 1184, adopted 6-9-98)

- (a) Whether the proposed development will efficiently utilize available land and will protect and preserve to the maximum extent possible natural features of the land such as trees, streams and topographic features;
- (b) Whether the development will be located in an area in which transportation, police and fire protection, other public facilities and public utilities, including sewerage, are existing or planned and funded with available capacity to adequately serve the development;
- (c) The extent to which the proposed development is consistent with the Town's comprehensive plan and other adopted plans and policies of the Town and the overall benefits of the development to the Town.

Rural Residential 2 zoning is a type of planned development residential zoning, tailored to the special needs of the Tom's Creek Basin. As such, the general purposes underlying the planned development residential district, stated in Zoning Ordinance Section 3110 apply equally to the Rural Residential 2 Zoning district.

**Sec. 3031 Permitted uses.**

Permitted uses within the Rural Residential 2 District shall be those uses permitted by right or by conditional use permit in the Rural Residential 1 District. Other Use Types which are determined to be appropriate and compatible with the proposed development and surrounding uses may be permitted in the RR2 district where they are specifically proposed in the initial

preliminary development plan and approved pursuant to Section 1161. The basic design of the Rural Residential development plan shall be for residential purposes, with all other uses designed to supplement the rural and residential character of the district.

**Sec. 3032 Site development regulations.**

Each Rural Residential 2 development shall be subject to the following site development standards.

- (a) Minimum district size: Thirty (30) acres.
- (b) Minimum open space: A minimum of fifty (50) percent of the total area shall be designated as permanent open space.
- (c) Maximum gross density: One (1) dwelling unit per acre, excluding acreage within the 100-year floodplain. *Accessory apartments shall not be considered in the density calculation.*
- (d) The maximum gross density may be increased up to a maximum of two (2) units per acre excluded acreage within the 100-year floodplain. Town Council will consider the suitability of the site for the proposed density as well as the quality and quantity of off-site open space proffered by the applicant. Approximately seventy-five (75) percent of proffered open space may be on the off-site parcel.
- (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 an accessory apartment (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.*
- (f) The Site Development Standards applicable to the Rural Residential 1 Zoning District shall apply to Rural Residential 2 developments, except variations which are specifically approved by Council through the Final Master Plan. Proposed deviations from Rural Residential 1 site development standards shall be identified by the applicant in the preliminary development plan.
- (g) All utility lines, electric, telephone, cable television lines, etc., shall be placed underground.

**DIVISION 4. R-4 LOW DENSITY RESIDENTIAL DISTRICT**

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**Sec. 3041 Permitted uses.**

(a) The following uses are permitted by right in the R-4, Low Density Residential District:

- Residential
- Single-Family, Detached
- Accessory Apartment as permitted by § 1270 and in compliance with § 4201.*
- Home occupations



Civic  
Community Recreation  
Open Space  
Public Parks and Recreation  
Utility Services, Minor

Miscellaneous  
Accessory structures

**Sec. 3042 Site development regulations.**

- (a) Minimum lot requirements:
  - (1) Lot area ten thousand (10,000) square feet
  - (2) Lot frontage forty (40) feet
- (b) Minimum setback requirements:
  - (1) Front yard thirty (30) feet (may be reduced to twenty-five (25) feet for uses with parking in rear)
  - (2) Side yard ten (10) feet, except on corner lots, a side yard facing the street shall be twenty (20) feet
  - (3) Rear yard twenty-five (25) feet
- (c) Maximum height of structures, except church spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennae, and radio aerials are exempt: Thirty (30) feet; or forty (40) feet with an additional one (1) foot setback per foot of additional height. Utility poles may have a maximum height of forty-five (45) feet.
- (d) Maximum coverage:
  - (1) Lot coverage forty-five (45) percent
  - (2) Floor area ratio 0.25 FAR
- (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 cumulatively including both the single-family dwelling and the accessory apartment for a total not to exceed three (3) unrelated persons.
- (f) All utility lines, electric, telephone, cable television lines, etc., shall be placed underground.

**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.*

*(b) General standards:*

- (1) The accessory apartment shall be clearly secondary and accessory to primary dwelling unit and shall not change its character as a detached single family residence.*
- (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.*
- (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 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.*
- (10) Incorporation of universal design standards.*

*To promote aging-in-place and housing for differently-abled individuals, universal design features are required in 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.*

To promote aging-in-place and housing for differently-abled individuals, universal design features are required in 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.

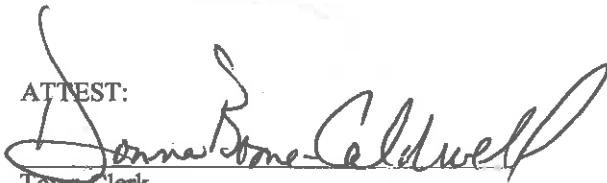
Design Feature Required	Use of existing finished space	Conversion of unfinished to finished space	New Construction
Universal design door handles	X	X	X
Zero step entry+		X	X
36" wide entry doorway+			X
36" wide hallways+			X
No step or low step shower+		X	X
Sleeping area, full bathroom and kitchen on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

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

Secs. 4201 4202—4210 - [Reserved].

2. This ordinance shall be effective July 1, 2017.

ATTEST:

  
 Donna Bone-Caldwell  
 Town Clerk

1st Reading:

March 14, 2017

2nd Reading & Adoption:

April 11, 2017

APPROVED AS TO CONTENT:

  
 Arne McCleung  
 Planning and Building

APPROVED AS TO LEGAL SUFFICIENCY:

  
 Town Attorney

  
 Mayor

