

**TOWN OF FALLS VILLAGE
PLANNING & ZONING COMMISSION**

**Memorandum regarding Opting out of the Accessory Dwelling Unit Provisions of
Public Act 21-29**

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Issued to P&Z in advance of its regular meeting on May 25, 2022

Background:

The Connecticut General Assembly passed Public Act No. 21-19 “An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and a Commission on Connecticut’s Development and Future”. More specifically, Section 6 of PA 21-29 provides that zoning regulations in CT shall:

- (1) Designate locations or zoning districts within the municipality in which accessory apartments are allowed, provided at least one accessory apartment shall be allowed as of right on each lot that contains a single-family dwelling and no such accessory apartment shall be required to be an affordable accessory apartment;*
- (2) Allow accessory apartments to be attached to or located within the proposed or existing principal dwelling, or detached from the proposed or existing principal dwelling and located on the same lot as such dwelling;*
- (3) Set a maximum net floor area for an accessory apartment of not less than thirty per cent of the net floor area of the principal dwelling, or one thousand square feet, whichever is less, except that such regulations may allow a larger net floor area for such apartments;*
- (4) Require setbacks, lot size and building frontage less than or equal to that which is required for the principal dwelling, and require lot coverage greater than or equal to that which is required for the principal dwelling;*
- (5) Provide for height, landscaping and architectural design standards that do not exceed any such standards as they are applied to single-family dwellings in the municipality;*
- (6) Be prohibited from requiring (A) a passageway between any such accessory apartment and any such principal dwelling, (B) an exterior door for any such accessory apartment, except as required by the applicable building or fire code, (C) any more than one parking space for any such accessory apartment, or fees in lieu of parking otherwise allowed by section 8-2c of the general statutes, (D) a familial, marital or employment relationship between occupants of the principal dwelling and accessory apartment, (E) a minimum age for occupants of the accessory apartment, (F) separate billing of utilities otherwise connected to, or used by, the principal dwelling unit, or (G) periodic renewals for permits for such accessory apartments; and*
- (7) Be interpreted and enforced such that nothing in this section shall be in derogation of (A) applicable building code requirements, (B) the ability of a municipality to prohibit or limit the use of accessory apartments for short-term rentals or vacation stays, or (C) other requirements where a well or private sewerage system is being used, provided approval for any such accessory apartment shall not be unreasonably withheld.*

If a municipality fails to adopt new regulations or amend existing regulations that comply with all aforementioned provisions (as written), and unless such municipality opts out of the provisions of PA 21-29 pertaining to accessory apartments by January 1, 2023, any noncompliant existing regulation shall become null and void.

Current Regulations:

Over the course of multiple meetings of the Falls Village Planning and Zoning’s Commission meeting, the Commissioners and its staff began discussing the implications of Public Act 21-29. To better understand how to approach Section 6 of the state law, they started by reviewing the local zoning regulations *(which can be*

found on page 10 & 13) pertaining to accessory apartments, which are allowed within residential zones as an accessory use. Accessory apartments which are internal to the single-family residence or “attached” are permissible via a zoning permit while accessory apartments which are internal and more than 1,000 square feet and/or accessory apartments which are “detached” (located in a structure that is accessory to the single family home) can be approved by Special Permit. There are additional standards in the zoning regulations which include the following:

- The owner of the property shall occupy either the principal unit or the accessory dwelling unit
- Only one accessory dwelling unit shall be established per lot
- The lot shall equal or exceed the minimum lot area requirement for the zone in which the property is located (*this means accessory apartments would not be allowed on legally non-conforming lots that are non-conforming due to their overall size*)
- Both the accessory dwelling and the primary residence shall meet the requirements of the Building and Public Health Code (*this is implicit to all zoning regulations*)
- No accessory apartment shall exceed 1,500 square feet or 40% of the floor area of the primary dwelling unit

Discussion and Commission Action:

The Commission acknowledged that it would likely need to address and update some provisions of the accessory apartment section as a part of the comprehensive Zoning Regulation revisions which is forthcoming. However, the Commission opted not to adopt the language set forth in Public Act 21-26, Section 6. This conclusion was reached due to the lack of clarity in some elements of the statutory provisions, which would become binding in its entirety if the Town does not opt-out.

The Town of Falls Village P&Z decided that they would be best suited for developing zoning regulations that address accessory apartments specific to the Town’s needs and perhaps achieve more comprehensible language that what was promulgated within PA 21-29. By “opting-out” the Town of Falls Village Planning & Zoning Commission can work to develop specific regulations that better fits the needs of current and future residents of the Town.

The Commission will move to set a public hearing for 6:30 pm on June 23, 2022 to initiate the opt-out process.

Next steps:

According to the legislation, the planning and zoning commission by a two-thirds vote may initiate the process by which such municipality opts out of the provisions regarding allowance of accessory apartments, provided the commission: (1) first holds a public hearing in accordance with the provisions of section 8-7d (the usual procedure for amending the zoning regulations) (2) affirmatively decides to opt out of the provisions within the period of time permitted under section 8-7d (3) states upon the records the reasons for such decisions, and (4) publishes notice of such decision in a newspaper having substantial circulation in the municipality not later than fifteen days after such a decision has been rendered.

Thereafter, the municipality’s Board of Selectmen, by a two-thirds vote, may complete the process by which such a municipality opts out of the provisions of Public Act 21-29 specific to accessory apartments. This subsequent step must be accomplished no later than January 1, 2023 or the statutory provisions will become binding.

Associated Materials:

[Public Act 21-29](#)

Planning Brief in re Accessory Apartments (*issued on March 24, 2022*)

STAFF RECOMMENDATION:

MOVE to set a public hearing to engage the opting out process of Public Act 21-29 with respect to the provisions of Sect. 6 pertaining to Accessory Apartments for June 23, 2022