

# PUBLIC HEARING



**To:** Town Council

**From:** Travis Morgan

**Date:** 3/11/2025

**Re:** **Stumpf Text Amendment for Accessory Dwelling Units** (*Action Item*)

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## **UPDATED PLANNING BOARD RECOMMENDATION:**

Planning Board had the opportunity to review legal opinion letter and discuss with Town Attorney at the 2/20/2025 Planning Board Meeting. The Planning Board recommended the same amendment as before with two additions 1) clarification that an accessory dwelling can be built right away but before both primary and secondary could be rented the owner had to live on the property for 24 consecutive months and 2) The owner has to sign an affidavit stating they will live on the property for 24 consecutive months before both units were rented.

Accessory Dwelling Unit name change text amendment was recommended and the revision of the owner occupant definition and section (F) restriction of the below ordinance to:

**“The property owner(s) shall occupy at least one (1) of the dwelling units on the property unless the property owner has resided on the premises for a period of not less than twenty-four (24) consecutive months, prior to non-owner rental of both the primary and the secondary dwelling.” AND (G) Owner(s) must sign and affidavit acknowledging and verifying that they will reside on the property for a period of not less than twenty-four (24) consecutive months before both primary and secondary dwelling unit are rented.**

## **REQUEST:**

Michael Stumpf requests your consideration for a text amendment to revise the Zoning Ordinance owner occupied restrictions for secondary dwelling units (otherwise called mother-in-law suites or accessory dwelling units)

## **STAFF COMMENT:**

After reviewing Town legal opinion, current and pending (HB409) state law, League of Municipalities advice, and existing legal case precedent; I recommend removing ownership related restrictions from Town Zoning. North Carolina case law seems to be adamant that ownership should not be a criteria for zoning. Who resides in a residence and how long is hard to verify as well. I recommend other clear and more legally upheld enforcement options.

I would encourage the negatives from rentals be addressed not through ownership but through those that are within the Town’s ability to enforce with current, or more strict revisions to current ordinances such as: police nuisance enforcement, zoning trash/debris, parking on the lawn, high grass, street parking, or similar.

**SUMMARY:**

Zoning ordinance section 3.3 and 6.5.35 are the relevant sections see below:

Existing Text:

P. 60 Definitions

**Dwelling, ~~Secondary~~Accessory Dwelling Unit**

An accessory dwelling either attached or part of the principal residential use or separate from the principal use in the form of a guest house or garage apartment provided that such dwelling meets this ordinance and provided that no accessory building containing such use is constructed on a lot until the construction of the main building has commenced. Secondary dwellings shall be inseparable from the principal residential use for the purposes of subdivision or sale. ~~The principal dwelling on the lot containing the private residential quarters shall be owner-occupied.~~

**6.5.35 Dwelling, ~~Secondary~~Accessory Dwelling Unit**

Secondary dwelling units or “in-law suites” within residential districts are permitted to meet housing needs following the requirements of this section and within this ordinance.

- A) Any secondary dwelling unit shall be located in the rear yard or above a garage of a single-family residential lot or single-family residential use and be subordinate in height and size to the primary dwelling.
- B) Secondary dwelling units may be created behind or as a second story within detached garages provided that the height of the accessory unit and/or garage does not exceed the height of the principal structure on the lot. Not more than one (1) secondary dwelling unit is permitted. There shall be a two (2) story height maximum.
- C) The secondary dwelling unit may not be larger than fifty (50) percent of the gross heated floor area of the principal structure or eight hundred (800) square feet, whichever is less.
- D) At least one (1) additional parking space shall be provided.
- E) Secondary dwelling units shall be located, designed, constructed, landscaped and decorated in such a manner to match the appearance of the principal building.
- F) **The property owner(s) shall occupy at least one (1) of the dwelling units on the property unless the property owner has resided on the premises for a period of not less than twenty-four (24) consecutive months, prior to non-owner rental of both the primary and the secondary dwelling**
- G) **Owner(s) must sign and affidavit acknowledging and verifying that they will reside on the property for a period of not less than twenty-four (24) consecutive months before both primary and secondary dwelling unit are rented.**

**PROCEDURE:**

This is a proposed text amendment to the Zoning Ordinance. This follows regular legislative process of simple majority vote. There are two current proposals centered around ownership: the applicant’s request to remove ownership clause and Planning Board latest recommendation to amend the ownership items for ADU’s.