

Ethan Lewis

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Board of Trustees

Stanley H. Kellerhouse Municipal Building

1 Van Wyck Street, Croton-on-Hudson, NY 10520

September 14, 2023

Re: § 230-41. Accessory Apartments Amendment

Dear Trustees,

I am pleased to submit this proposal of suggested alterations to the amendment of the Village Zoning code. These alterations would facilitate additional accessory apartments and the legalization of detached ADUs. I am grateful that the board has been so engaged and forthcoming. The alterations I have proposed are intended to be constructive recommendations, to be considered on a line-by-line basis, and modified, rejected, or improved upon by the board and other stakeholders.

ADUs can serve as a transformative catalyst for single-family neighborhoods. While no magic bullet will solve our village's housing ills, the amendment is a straightforward step we can take to increase housing stock and lower barriers. I hope this proposal will contribute to the ongoing dialogue on sustainable urban development here in Croton, inspire further research, and guide policymakers, developers, architects, and community stakeholders in shaping a more inclusive and vibrant future for the Village. The future of ADUs is promising, and I intend to stay informed and involved as an advocate.

Best,

Ethan Lewis

About The Author

Ethan Lewis, LEED AP BD+C, is an architectural designer at Hart Howerton, an interdisciplinary residential development team, and a member of the American Planning Association. He received a Bachelor of Science in Real Estate and a Bachelor of Architecture from the Tulane School of Architecture. His senior honors thesis, which received a commendation, was on accessory dwelling units in New Orleans and included grant-funded research in the city and Los Angeles. Ethan has been a Village resident for over fifteen years. During his time at Tulane, he participated in the design and construction of affordable housing and co-led the annual design and construction of a Sukkah, an open-air hut-like structure used in the celebration of Sukkot. Ethan also served as a two-term president of the school's student government and one term as the president of the school's AIAS chapter. He has been recognized as one of the 2023 Metropolis Future 100 for his distinctive work and is currently a AIAS CRIT Scholar.

Altered Amended Code

§ 230-41. Accessory apartments.

- A. An accessory apartment shall be permitted in a single-family detached dwelling or in an accessory structure (an accessory cottage) on a lot containing no more than one dwelling unit or a two-family residence, in districts permitting single-family and two-family residences upon approval by the Planning Board, subject to the conditions and limitations contained in this section.
- B. An accessory cottage shall comply with all requirements of this chapter applicable to accessory structures. An accessory cottage may be located in a conforming accessory structure existing as of the date of this section having a setback to any property line of less than 5 feet, provided no new windows or egresses are located on the elevations of the building located less than 5 feet from the lot line. The Planning Board shall have the authority to approve a greater building height than other accessory structures if warranted by the specific circumstances of a particular building or lot.
- C. No accessory apartment or accessory cottage shall be installed or maintained except upon approval by the Planning Board. The application procedures and required submittals shall be the same as for minor site plan approval, except that noticing shall be required for property owners within 100 feet of the subject property and that scaled floor plans, with floor areas noted, shall be submitted as part of the application. The application fee for an accessory apartment or accessory cottage application shall be an amount set by resolution of the Board of Trustees. Approval for an accessory apartment or accessory cottage shall be issued to the property owner.
- D. Short-term rentals (rental for less than 30 days) of the accessory apartment or accessory cottage are prohibited unless a permanent resident of the accessory apartment or accessory cottage is present during the rental.
- E. Only one accessory apartment or accessory cottage per lot containing a single-family detached dwelling or two-family residence shall be permitted.
- A. The character, degree, and extent of any additions to the residence or new accessory structure shall be a factor to be considered by the Planning Board in the approval of an application for an accessory apartment or accessory cottage.
- B. An accessory apartment shall have separate access unless there is a single access from the front of the building with split access once inside the building.
- C. All code requirements under Village law and other applicable laws and regulations shall be complied with, and a building permit obtained for any changes or alterations requiring such permit. The building permit fee for an accessory apartment or accessory cottage shall be reduced by 50%.
- D. The habitable floor area of an accessory apartment within a single-family or two-family dwelling or an accessory cottage shall be no greater than 1,000 square feet. The Planning Board

shall have the authority to approve a greater amount of floor area if warranted by the specific circumstances of a particular building or lot.

F. No additional parking shall be mandatory for an accessory apartment or accessory cottage. If parking is removed, a minimum of two off-street parking spaces or a driveway that can fit two parked cars in tandem must be provided on the lot. If parking is removed in a two-family dwelling, a minimum of three off-street parking spaces or a driveway that can fit three parked cars in tandem must be provided on the lot. No snow permit shall be granted to a property with an accessory apartment unless the same was given prior.

G. If the premises are not serviced by the Village sewer system, approval of the Westchester County Department of Health shall be obtained before Planning Board approval.

Annotated and Altered Amended Code From the 7/17 Work Session Proposal

RED = Amendments proposed in 7/17 work session document.

GREEN = Suggested revisions and inclusions.

§ 230-41. Accessory apartments.

A. An accessory apartment shall be permitted in a single-family detached dwelling or in an accessory structure (an accessory cottage), on a lot containing no more than one dwelling unit or a two-family residence, in districts permitting single-family and two-family residences upon approval by the Planning Board, subject to the conditions and limitations contained in this section.

Why the Change:

The Two-Family Residences in District RB (primarily located in the Upper Village) are prime examples of units that are more likely to see the creation of ADUs due to their proximity to stores and transit, such as the upper village shops and Bee-Line bus routes 10 and 14. Many of these homes are on large lots with deep backyards. Restrictions that eliminate duplexes from considerations overly limit the number of eligible properties where ADUs can legally be built.

B. An accessory cottage shall comply with all requirements of this chapter applicable to accessory structures, except building height with , except that any such structure shall have a minimum setback from all property lines of 10 feet. An accessory cottage may be located in a conforming accessory structure existing as of the date of this section having a setback to any property line of less than 10-5 feet, provided no new windows or egresses are located on the elevations of the building located less than 5 feet from the lot line. The Planning Board shall have the authority to approve a greater building height than other accessory structures if warranted by the specific circumstances of a particular building or lot.

Why the Change:

Section B is overly constraining for many neighborhoods with smaller lot lines, such as Harmon, which would be the most beneficial areas for the development of ADUs due to its proximity to the train station, shops, dining, and walkability. I recommend a rule more in line with national standards, so as not to effectively prohibit ADU construction in these neighborhoods and allow for the maximization of preservation of useable backyard space if desired. I can't emphasize enough how unusually large 10' setbacks are and how detrimental

such a restriction would be to the areas in Croton where ADU construction would be of the most benefit.

R-5 Zoning allows 5' setbacks for side yards in existing small lots as stated in § 230-40.G.1. A 10' setback is overly restrictive, given that even 35-foot tall primary residences can already be built closer to property lines. If it is permissible for the houses in our densest single-family neighborhoods, it should be permissible for ADUs. These amendments' objective is to lower barriers, not raise the bar. As § 230-40.A states accessory buildings are already restricted to 15' in height and 5' setbacks from primary lines. Such restrictions are already sufficient to reduce overly imposing large masses. The ability to allow for taller ADUs, if appropriate at the planning board's discretion, will facilitate lofted units or two-story units, most likely when lots are large enough that the construction of these units does not intrude upon neighbors' enjoyment of their own property.

Additionally, it is likely that on larger lots, those who create ADUs will choose to situate them near existing driveways and paths to reduce site work costs and will wish to maximize viewsheds. However, these choices are best left to the owners' discretion and reviewed by the planning board on a case-by-case basis.

As garage conversions significantly reduce costs associated with ADUs, it is best to ensure that no garage is rendered ineligible by its locations. However, protecting neighbors' privacy is important. The prohibition of additional windows or egresses along non-conforming elevations will be sufficient in limiting such intrusions.

CB. No accessory apartment or accessory cottage shall be installed or maintained except upon approval by the Planning Board. The application procedures and required submittals shall be the same as for minor site plan approval, except that noticing shall be required for property owners within 100 feet of the subject property and that scaled floor plans ~~for the dwelling~~, with floor areas noted, shall be submitted as part of the application. The application fee for an accessory apartment or accessory cottage application shall be an amount set by resolution of the Board of Trustees. Approval for an accessory apartment or accessory cottage shall be issued to ~~and run with~~ the property owner.

Why the Change:

The permission for an accessory cottage or apartment should not be revoked upon transfer of ownership. Such a decision would introduce an undue burden on property owners and hamper resale value and opportunities for loans to build the ADU.

Note on Impact Fees:

Although not typically included in zoning code language, the way building permits and impact fees (sometimes called 'system development charges') are calculated for ADUs can have a big effect on how many get built. This is especially true if such fees represent a significant percentage of the total project cost (particularly likely with relatively inexpensive

ADU conversions). Finally, high fees can steer ADU development 'under the radar screen,' where there's no permitting or inspection at all – and a greater likelihood of dangerous life/safety conditions for residents. The language in the legislation cutting building permit fees by 50% is commendable, and avoiding the assessment of additional impact fees is essential for these ADU projects to be perused.

It's common for jurisdictions to charge reduced impact fees for ADUs. Portland's decision in 2010 to waive impact fees on ADUs to meet public policy goals played a significant role in the subsequent increase in ADU development. Depending on municipal policy goals, there may well be a case for setting ADU fees below what would be charged for a standard single-family home or dropping them altogether.

Text adapted from accessorydwellings.org's Model Code for Accessory Dwelling Units.

D. Short-term rentals (rental for less than 30 days) of the accessory apartment or accessory cottage are prohibited unless a permanent resident of the accessory apartment or accessory cottage is present during the rental.

C. The owner of a detached dwelling property in which the accessory apartment is located shall occupy at least one of the dwelling units on the premises as his primary residence. For the purposes of this § 230-41C of the Zoning Code, the word "owner" shall mean: any individual who is an owner of the subject premises, including a joint tenant, tenant in common or tenant by the entireties; or the grantor and/or beneficiary of a trust that owns the subject premises; or the owner of a majority of the membership interest/share interest in an LLC or corporation that owns the premises.

~~(1) — The Planning Board approval for an accessory apartment shall become null and void within 90 days of any of the following events: change of property ownership; b) death of the property owner; or change in residence of the owner. The Planning Board may grant a ninety-day extension past the expiration for good cause, including that an application has been filed to continue an accessory apartment use.~~

(2) — Upon a change in ownership, should the new owner desire to continue the accessory apartment or accessory cottage use, then the new owner shall apply to the Planning Board for renewal of the approval provide notification to the Building Department confirming the new owner will reside in the premises as required and that they are aware of the laws regarding accessory apartments and accessory cottages and will remain in compliance. Such notice shall be provided within 90 days of the change of ownership. Failure to timely file will result in a revocation of the accessory apartment approval and the new owner will have to make a new application.

Why the Change:

Regulations that place more restrictions on tenure (ownership vs. rental), and affordability than would apply to a primary dwelling on the same lot result in less ADU construction. You can own a single-family house in Croton and rent it out. Owner-occupancy requirements make properties with ADUs unsuitable for income-based valuation by appraisers, constraining their value and making them more difficult to finance. Affordable housing restrictions on ADUs sound appealing, except that deed restrictions and tenant income screenings are (unsurprisingly) obstacles for mom-and-pop landlords (fortunately, ADUs provide a surprising amount of market-based affordable housing without subsidy or use restriction, as evidenced by various studies and my own research). All such restrictions in the state of California have been removed since 2020. As the objective of these ADU amendments is to produce long-term missing middle housing, short-term rental restrictions ensure that the increased density is in pursuit of this goal rather than general new income opportunities for homeowners and developers. Similar legislation is now on the books in New York City.

Some text adapted from accessorydwellings.org's Model Code for Accessory Dwelling Units comments.

ED. Only one accessory apartment or accessory cottage per lot containing a single-family detached dwelling or two-family residence shall be permitted.

- E. ~~No accessory apartment shall be permitted on premises where there is also a professional office use.~~
- F. ~~An accessory apartment shall be permitted only within the main structure and not within any accessory building.~~ The character, degree, and extent of any additions to the residence or new accessory structure shall be a factor to be considered by the Planning Board in approval of an application for an accessory apartment or accessory cottage.
- G. An accessory apartment shall have separate access, **not observable from the street**, unless there is a single access from the front of the building with split access **once** inside the building.
- H. All code requirements under Village law and other applicable laws and regulations shall be complied with and a building permit obtained for any changes or alterations requiring such permit. The building permit fee for an accessory apartment or accessory cottage shall be reduced by 50%.
- I. The habitable floor area of an accessory apartment within a single family or two-family dwelling or an of an accessory cottage shall be no greater 1,000 square feet. ~~shall be no less than 4300 square feet and no greater than the lesser of 750800 square feet or 33.340% of the habitable floor area of the dwelling in which it is contained. The habitable floor area of an accessory cottage shall be no less than 400 square feet and no greater than 800 square feet, but~~

in no case larger than the primary dwelling structure. The Planning Board shall have the authority to approve a greater ~~or lesser~~ amount of floor area if warranted by the specific circumstances of a particular building or lot.

- J. ~~The lot size for buildings containing accessory apartments shall conform to the requirements of the district in which the building is located, unless a variance shall have been granted by the Zoning Board of Appeals.~~

Why the Change:

The removal of the clause hiding accessory apartment entrances from the street is driven by both neighborhood character concerns and a desire not to treat residents of ADUs as second-class citizens. These are not servants' quarters to not be seen but rather an integral part of diverse, livable neighborhoods. Separate access helps define the unit, but the restriction on observability from the street has little benefit and is a requirement that may harm rather than benefit the characteristics of the neighborhood and ADUs. Imagine if this clause was applied to existing homes. How unwelcoming would Croton be if all houses lacked a welcoming front door, instead of tucking them in the rear? Keeping the remaining text ensures that the second unit can be accessed without entering the primary unit, via a separate external entrance or an anteroom after the front door.

While most homes will be in the 400-800 SF range, I see no reason why there should be a minimum size. There are many instances where an ADU of as little as 200 square feet would be suitable, such as for a young adult on the spectrum. Mandating a size will also limit the use of affordable prefabricated options, which tend to be smaller. For examples, see this attached table comparing ADU units at the 2023 California Tiny Home Fest in San Diego. Note seven of the ten units are under four hundred square feet:

EXTERIOR: 

INTERIOR: 

DETAIL: 

Companies	United Tiny Homes	Azure	ADU Works	Crown Pacific Homes	US Modular	Modal	Villa	WellNest	Atom Modular	Call Backyard Homes	
Assembly Location:	Goodyear, AZ	Culver City	California, on Site	San Diego County	Calimesa, CA	Salt Lake City, UT	San Francisco, CA	Dublin, CA	Bonita, CA	Riverside, CA	
ADUs Built	32	3	3	36	195	20+	8	Unknown	Unknown	Unknown	
Financing With Partners	25 Year Loan	Not Available	Not Available	FHA, VA & Conventional	Not Available	30 Year Mortgage & Cash-Out Refinance.	Cash-Out Refinance & HELOC	Varies, Keypoint Credit Union Partner	Not Available	HELOC, 21st Mortgage	
Unit:	Cheyenne	Coral	Maverick 392	Encore 1223 1A	Lakeside 3501	Modal 01	H450	WellNest Pod	Solis 320	One Bedroom Home	
Cost:	\$ 110,000	\$ 110,000	\$ 130,400	\$ 70,995	\$ 107,000	\$ 260,000	\$ 115,000	\$ 175,000	\$ 120,000	\$ 135,000	
Size:	340 sf	540 sf	392 sf	391 sf	344 sf	432 sf	569 sf	300 sf	320 sf	340 sf	
Price Per SF:	\$ 324	\$ 220	\$ 356	\$ 205	\$ 311	\$ 602	\$ 202	\$ 583	\$ 403	\$ 397	
Structure Material	Stick Frame	Plastic 3D Printing	SIP	Stick Frame	Stick Frame	Stick Frame	Stick Frame	Stick Frame	Steel Frame	Stick Frame	
Site Installation:	Not Provided	Extra Fee	Included	Not Included	Not Included	Included	Included	Included	Not Included	Included	
Appliances:	Stainless Steel, Included	Stainless Steel, Included	Not Included	White, Included	Stainless Steel, Included	Stainless Steel, Included	Stainless Steel, Included	Stainless Steel, Included	Stainless Steel, Included	Stainless Steel, Included	
Wall Insulation:	R10	R30	R20	R10	R10	R20	R10	R15	R10	R10	
HVAC:	2 Mini Splits	1 Mini Splits	Unknown	2 Mini Splits	2 Mini Splits	1 Mini Split	Forced-Air System	1 Mini Split	1 Mini Split	2 Mini Splits	
Averages:											\$ 136,940
											\$ 397
											\$ 360

Comparison Chart & Photos By Student Unless Marked With *, In Which Case Photos Are From The Companies Website.

Increasing the cap from 800 to 1,000 square feet increases the possibility of small two-bedroom units. Two-bedroom apartments account for 40% of all rentals and have an average size of 1,138 square feet, as of 2018 (National Multifamily Housing Council). These units are ideal for single parents, small families, or elderly residents looking to have a guest bedroom. The existing rules that the aggregate accessory structures on a property shall not occupy more than 30% of the area of the required rear and side yards and that the home and accessory structures can't exceed 40% of lot coverage even in R-5 districts (§ 230-40 A.) are already more than sufficient in ensuring that smaller properties are not overwhelmed by the size of the ADUs (§ 230-40 A.1.C).

Additionally, using a lesser percentage of the floor area of the dwelling is a punitive measure to smaller, older homes that also tend to be more affordable and often occupied by less wealthy or older residents. I believe a simple cap on maximum size at a thousand square feet would be sufficient. The last sentence in this section still provides the planning board maximum flexibility for dealing with special circumstances or properties.

~~**JK. The building shall, to the degree reasonably feasible, maintain the character and appearance of a single-family dwelling.**~~

Why the Change:

What is the character of a single-family home? Single-family homes are not a vernacular language or style and come in such a wide range of shapes, forms, and sizes that such a restriction is impossible to define. Additionally, ADUs are not single-family homes, and it would be unwise for a different typology to attempt to imitate something it is not. Cities, including Seattle, WA, Vancouver, BC, and Eugene, OR, don't have any special requirements that ADUs match the exterior appearance of the primary dwelling. ADUs represent a significant investment, and builders, homeowners, and architects have numerous market incentives to make ADUs look appealing and appropriate for the neighborhood. Such restrictions are also not currently listed in the zoning code for accessory structures. Lastly, as a stopgap measure for egregious projects, it is still stated in the code that the character of the unit shall be a factor to be considered by the Planning Board.

~~**KL. A residence containing an accessory apartment shall have a minimum of three off-street parking spaces. No additional parking shall be mandatory for an accessory apartment or accessory cottage. If parking is removed in a single-family dwelling, a minimum of two off-street parking spaces or a driveway that can fit two parked cars in tandem must be provided on the lot. If parking is removed in a two-family dwelling, a minimum of three off-street parking spaces or a driveway that can fit three parked cars in tandem must be provided on the lot. however, a parking assessment shall be made by the Planning Board on a case-by-case basis during review of the application, and the Planning Board shall have the authority to require additional parking based upon such review. All existing required parking for the primary dwelling must be maintained or replaced on-site. No snow permit shall be granted to a property with an accessory apartment unless the same was given prior. In an RA-5 District, no expansion of the existing parking area shall be permitted in order to satisfy this off-street parking requirement.**~~

Why the Change:

Removing parking requirements, in line with California regulations, is a promising step. However, the ruling to maintain or replace all existing parking on site, regardless of the home's size relative to the available spaces, is strange and punitive. In Croton, houses of similar size can be found with two, one, or no garages and can park many cars in tandem, even in small homes in walkable neighborhoods. Since garage conversions are the most affordable type of ADU, such a restriction will be especially detrimental. The parking minimum for projects that remove existing spaces ensures that properties will maintain the capacity for one off-street parked car for each unit on the property. It is likely that many will choose to add or preserve more parking depending on the location of the property, but encouraging maximum flexibility is ideal. The removal of planning board authority in this particular case is to ensure that overly onerous parking requirements are not effectively added without further legislation and that there is no weaponization of parking requirements to stop particular projects. Lastly, being consistent and removing regulatory review will help reduce uncertainty among homeowners as they embark on a significant investment of time and capital into improving their property. There are many alternatives and perhaps even better ways to ensure reasonable off-street spaces without using the above language, and I am by no means well-versed in writing parking requirements.

LM. If the premises are not serviced by the Village sewer system, approval of the Westchester County Department of Health shall be obtained before Planning Board approval.