



ACCESSORY DWELLING UNITS

PLANNING



32-76 ACCESSORY DWELLING UNITS.

32-76.1 Purpose.

The purpose of this section is to increase opportunities for the development of smaller dwelling units for individuals and families developed on certain lots which are zoned for single family residential use; to provide affordable rental housing units for families and individuals with limited income; to provide rental units for the elderly and disabled; and to protect property values and the integrity of the neighborhood by ensuring design and development standards are compatible with the existing neighborhood.

(Ord. #2014-06, § 2)

32-76.2 Definitions.

Accessory dwelling unit is an attached or detached conditioned residential unit, which provides complete, independent living facilities for one (1) or more persons. It includes permanent provisions for living, sleeping, cooking, eating and sanitation on the same parcel as the primary unit. The term "Accessory dwelling unit" includes a guesthouse, in-law unit, efficiency unit (as defined in Health and Safety Code Section 17958.1), manufactured home (as defined in Health and Safety Code Section 18007), and similar Accessory dwelling units, which provide complete independent living facilities. (Government Code Section 65852.2 (i)(4).)

Administrative Accessory Dwelling Unit Review Process shall be defined as the review process conducted under a separate application filed with the Town either prior to or concurrent with the submittal of a building permit application for an accessory unit where an advisement of the action to be taken by the Town on the application shall be sent by mail to surrounding property owners within a three hundred fifty (350) foot radius of the subject parcel. In the case of an appeal, the application shifts to a Planning Commission review process.

Attached shall be defined as a building or a structure that is structurally a part of or has a common wall or continuous roof with the main building or structure.

Conditioned space shall be defined as an area or room that is being heated or cooled for human habitation.

Conversions shall be defined as a garage or accessory structure repaired or rebuilt in excess of fifty (50) percent of its reasonable market value, square footage, or combination thereof. A conversion does not include the increase in height of the structure.

Detached shall be defined as a building or structure not structurally part of and not sharing a common wall or continuous roof with the main building or structure.

Ministerial Accessory Dwelling Unit Review Process shall be defined as the review process conducted concurrently with the submittal of a building permit application for an accessory dwelling unit. The Town shall review the building permit submittal to ensure it meets the standards outlined in this section.

Non-conditioned space shall be defined to include, but are not limited to, open decks, patios, breezeways, non-conditioned shops, garages, and storage areas.

Planning Commission Accessory Dwelling Unit Review Process shall be defined as the review process conducted under a separate application filed with the Town where a proposed Accessory dwelling unit includes an exception or variance request. The review process shall include a public hearing held by the Planning Commission where notification is mailed to surrounding property owners within a seven hundred and fifty (750) foot radius of the subject parcel.

(Ord. #2014-06, § 2, Ord. #2017-05)

32-76.3 General Design and Development Standards.

An accessory dwelling unit, which meets the requirements of this section shall be allowed on a parcel which is zoned for single family residential use. An accessory dwelling unit which meets the requirements of this section shall be considered in compliance with the allowable residential density for the lot upon which the Accessory dwelling unit is located and shall be considered a residential use that is consistent with the existing General Plan and zoning designation for the lot.

- a. Architectural features.* Architectural projecting features (i.e., cornice, roof overhangs, chimney, fireplaces, media niche, bay windows or similar projecting features) on a detached accessory unit may extend a maximum of 24 inches into the required side and rear yard setbacks for structures that maintain a minimum five (5) feet setback.
- b. Balcony, Decks, Platforms.* Elevated balconies, decks, or platforms shall not be allowed for any accessory dwelling unit that does not maintain the required minimum structure setbacks applicable to the primary residence. Ground level decks and platforms shall maintain a five (5) foot side and rear setback.
- c. Bedrooms.* An accessory dwelling unit shall not contain more than two (2) bedrooms with the exception of units over one thousand (1,000) square feet. Units over one thousand (1,000) square feet may have a maximum of three (3) bedrooms.
- d. Conversions.* Conversion of an existing accessory detached garage or the conversion of an existing structure above an existing detached garage into an accessory dwelling unit shall be subject to the following:

- i. *Setbacks (side and rear)*. Setbacks are not required for an existing garage or existing accessory structure that is converted to an accessory dwelling unit. A new accessory dwelling unit above an existing garage shall maintain a minimum setback of five (5) feet from the side and rear property line. The five (5) foot setback shall only apply to the new accessory dwelling unit.
 - ii. *Height*. A new second story accessory dwelling unit above an existing detached garage shall have a maximum height of 22 feet, with no part of the unit more than nineteen (19) feet in height within ten (10) feet of the property line.
- e. *Density*. There may be only one (1) accessory dwelling unit per lot, which shall comply with all applicable building, fire, and health and safety codes.
- f. *Design*. The exterior appearance of an accessory dwelling unit shall be architecturally compatible with the primary residence and with the surrounding neighborhood. Architectural compatibility will be determined to exist where there is coordination of building colors and materials (e.g., stucco, siding, masonry material, etc.), coordination of roof material, fenestration, other defined architectural features (e.g., wood details, corbels, stucco coins, masonry material, etc.) and coordination of landscaping ancillary to structures visible by the public or surrounding property owners. The Development Services Department shall review Accessory dwelling units for compliance with the design standards.
- g. *Detached Garage and Accessory Dwelling Units*. A detached accessory dwelling unit may be constructed in conjunction with a detached garage provided the garage/accessory dwelling unit's location observes the applicable setbacks and height. A detached garage which is developed in conjunction with a detached accessory dwelling unit shall be limited to the size necessary to accommodate a maximum of two (2) standard-size parking spaces which shall be a maximum garage dimension of twenty (20) feet wide and twenty-two (22) feet deep, measured from the face of the interior walls.
- h. *Height*. The maximum height of an accessory dwelling unit shall be two and one (2-1/2) half stories or thirty-five (35) feet in height, whichever is less, provided that the Accessory dwelling unit observes the minimum setbacks applicable to the primary residence. Detached Accessory dwelling units with setbacks that are less than the requirements for the primary structure, as allowed for in this section, shall have a maximum height of fifteen (15) feet. Accessory dwelling units within Town-identified Scenic Hillside or Major Ridgeline areas shall comply with additional height restrictions as outlined in Section 32-69 of the Municipal Code.
- i. *Heritage Trees*. All accessory dwelling units shall adhere to the provisions of Section 32-79 of the Danville Municipal Code - Tree Preservation if the proposed placement of the Accessory dwelling unit is located within the dripline of a protected tree as identified in subsection 32-79.3 of the Tree Preservation regulations.
- j. *Occupancy*. The property owner shall occupy either the principal or the accessory residential unit. If neither unit is owner-occupied; then the use of the property shall revert

to a single family occupancy. Nothing in this section shall be construed to prohibit one (1) or both of the units remaining vacant. This owner-occupancy requirement may be temporarily waived for a period of not more than three (3) years if the Planning Commission finds that the owner has an unavoidable reason for absence and if the owner appoints in writing another person to occupy and take responsibility for maintaining the property. All properties approved for Accessory dwelling units must be maintained at a level consistent with the neighborhood in which it is located.

- k. *Parking, Off-Street.* An additional on-site parking space for the accessory dwelling unit is not required.
- l. *Setbacks (front minimum).* Except for garage conversions, all accessory dwelling units shall maintain the minimum front yard and secondary front yard setbacks applicable to the primary structure.
- m. *Setbacks (side and rear minimum).* Except for garage conversions, attached accessory dwelling units shall observe the same setbacks applicable to the primary structure. New detached accessory dwelling units (not including garage conversions) shall observe a minimum side and rear yard setback of ten (10) feet from the property line subject to the applicable height and window placement requirements. Accessory dwelling units may be constructed with side and rear setbacks that are less than ten (10) feet from the property line only upon the approval of an exception or variance by the Planning Commission.
- n. *Subdivision.* The primary and accessory dwelling units may not be sold separately and no subdivision of land or air rights shall be allowed. The construction, financing or leasing of Accessory dwelling units shall be exempt from the requirements of the Planning and Zoning Law pursuant to Section 65852.2. of the California Code.
- o. *Window Placement.* Detached accessory units with a setback of ten (10) feet or less on a side or rear property line shall be designed so that any window facing that property line shall be located no less than 6 (six) feet above the finished floor to minimize direct views to adjacent neighboring properties to preserve privacy. This six (6) foot window placement shall also apply to any detached two-story accessory dwelling unit that does not meet the required minimum side or rear yard setback requirements for the primary residence.
- p. *Utilities.* All new utilities for detached accessory dwelling units shall be installed underground.

(Ord. #2014-06, § 2; Ord. 2017-05)

32-76.4 Procedure for Accessory Dwelling Unit Approval.

- 1. *Application.* Applications shall be submitted to the Town accompanied by all required fees, project plans (drawn to scale) depicting all onsite improvements, the location of the primary residence and the proposed Accessory dwelling unit and existing trees, floor plans and architectural elevations showing the proposed Accessory dwelling unit and its relation to the primary residence, a description of building materials, landscaping, exterior finishes to be used, parking to be provided, and any other information required by the Town to

determine whether the proposed Accessory dwelling unit conforms with the requirements of this section. All applicants shall adhere to procedures for the implementation of this section, including the design and development standards subsection and the Design Review Board submittal checklist for plans and drawings.

2. *Application and Review Process for Accessory Dwelling Units.*

Unit Size (square feet)	Process Type
150 - 1,000	Ministerial
> 1,001 - 2,000	Administrative
Variance, Exceptions, and Appeals	Public Hearing - Planning Commission

a) *Ministerial Accessory Dwelling Unit Review Process.* A ministerial review process shall be conducted concurrently with the submittal of a building permit application for the Accessory dwelling unit.

- (i) *Unit Size.* The unit size may be a minimum of one hundred fifty (150) square feet and a maximum of one thousand (1,000) square feet of conditioned space.
- (ii) All Accessory dwelling unit application proposals under the ministerial review process shall comply with the design and development standards as specified in Section 32-76.3. If the proposal is determined to conform, the request shall be approved at a ministerial level by the Town.

b) *Administrative Accessory Dwelling Unit Review Process.* For accessory dwelling units that do not qualify for ministerial review, an administrative review process shall be conducted prior to or concurrently with the submittal of a building permit application. The applicant must file a Development Plan application with the Town. The Town shall notify all owners of property within three hundred fifty (350) feet of the subject property not less than ten (10) days prior to the Town's action on the application.

- (i) *Unit Size.* The unit size may be at a minimum of one thousand and one (1,001) square feet with the maximum size of two thousand (2,000) square feet of conditioned space.
- (ii) All accessory dwelling unit application proposals under the Administrative review process shall comply with the design and development standards as specified in Section 32-76.3.
- (iii) Minimum lot size for any Accessory dwelling unit over one thousand (1,000) square feet in size shall be forty thousand (40,000) square feet. For any Accessory dwelling unit proposed to be over one thousand (1,000) square feet in size, a finding must be

made that the increased size of the Accessory dwelling unit results in a Accessory dwelling unit that is in scale with the receiving property, is not larger than the primary structure on the property, and that the Accessory dwelling unit is architecturally designed to mitigate the potential appearance of excessive building massing.

- (iv) Accessory dwelling units developed under this section shall be subject to review by the Danville Design Review Board, if such review is deemed necessary by the Town.
- c) *Planning Commission Accessory Dwelling Unit Review Process.* If an application does not conform to subsection 32-76.3 of this section and the Town determines that the application requires a variance or an exception, the Accessory dwelling unit shall be scheduled for review by the Planning Commission for consideration and action during a noticed public hearing. The Town shall notify all owners of property within seven hundred fifty (750) feet of the subject property that the application has been filed and the date, time, and location of the Planning Commission public hearing.
 - (i) An exception to the otherwise applicable setback regulations for detached Accessory dwelling units may be granted as part of the public hearing review process where the Planning Commission finds that, due to the receiving property's relationship to surrounding properties, reduced setbacks will not adversely impact the privacy enjoyed by residents occupying surrounding properties.
 - (ii) If this finding is made, minimum setbacks may be reduced to comply with the minimum requirements for detached accessory structures in single-family districts, as specified in subsection 32-22.9 of the Danville Municipal Code.
- d) Accessory dwelling units proposed in a Town-identified Scenic Hillside or Major Ridgeline Area shall be developed in compliance with Section 32-69 of the Danville Municipal Code, and shall be subject to review under a Development Plan application and considered by the appropriate review body as outlined in the Scenic Hillside and Major Ridgeline Development regulations.
- e) Nothing in this section shall preclude the ability of the Planning Commission to approve Accessory dwelling units, to be constructed as part of a new housing development to help the development meet the requirements of the Town's Inclusionary Housing for Affordable Housing Ordinance, which does not conform to the design and development standards contained within this section.

(Ord. #2014-06, § 2)

32-76.5 Deed Restriction.

Before obtaining a building permit for an accessory dwelling unit, the property owner shall file with the County Recorder a declaration or an agreement of an owner occupancy restriction, executed by the property owner, which has been approved by the City Attorney as to its form and content, and stating that: "The Accessory dwelling unit shall be in effect only so long as the owner of record of the property occupies either the primary residence, or the Accessory

dwelling unit." This agreement is initiated to ensure the Town's ability to enforce the owner occupancy restriction.

(Ord. #2014-06, § 2; Ord. 2017-05)

32-76.6 Existing Accessory Dwelling Units.

- a. An existing, approved Accessory dwelling unit not in conformance with this section shall be considered a nonconforming Accessory dwelling unit. If a property owner wishes to alter an existing nonconforming Accessory dwelling unit, the requirements of this section will apply to the proposed alteration.
- b. An existing but not approved Accessory dwelling unit that meets the requirements of this section may be legalized if the property owner modifies the Accessory unit to address any deficiencies identified through a life/safety inspection by the Town Building Division.

(Ord. #2014-06, § 2)

32-76.7 Exceptions.

- a. Exceptions to this section may be granted by the Chief of Planning as a reasonable accommodation under Section 30-12.
- b. A setback exception for detached Accessory dwelling units may be approved by the Planning Commission pursuant to Section 32-76.4.2.c.i.

(Ord. #2014-06, § 2; 2017-05)

32-76.8 Variances.

Variance permits to modify any standards contained in this section may be granted by the Planning Commission upon meeting the appropriate variance findings.

(Ord. #2014-06, § 2)

32-76.9 Appeals.

Approvals for Accessory dwelling units under this chapter may be appealed for cause within ten (10) days of project approval in accordance with Section 32-4.7 of the Danville Municipal Code and where the appropriate appeal fee is submitted.

(Ord. #2014-06, § 2)