

From: Numanoglu, Jessica
Sent: Monday, March 26, 2018
To: Hamilton, Leslie <lhamilton@ci.oswego.or.us>
Cc: Boone, Evan <eboone@ci.oswego.or.us>
Subject: RE: "habitable" area in accessory structure - Curt Olson

Leslie,

The issue as I understand it is whether the 200-400 sq. ft. exception to FA allowed per LOC 50.04.001.1.d.i(2) would apply to any portion of a detached garage. It hinges on what we consider to be "habitable" because the code section states that

d. Floor Area – Additional Standards

i. Floor Area of Garages and Accessory Structures

(1) Garage and Accessory Structures Included in Calculation

For purposes of calculating maximum floor area for dwellings in the R-7.5, R-10, and R-15 zones, the floor area of garages and accessory structures shall be included in the total that is subject to the maximum floor area standard of this section.

(2) Exceptions

"Habitable areas of detached accessory structures that would normally be counted as floor area shall be exempt from floor area calculations..."

LOC 50.04.001.1.d.i(2)

The code defines "habitable" as

"...the portion of any building or structure used, or intended for use on a day-to-day basis, by people for residential purposes, or for purposes of conducting a commercial or industrial business, public use, or institutional use, or for purposes of a similar nature." LOC 50.10.003.2.

That definition is obviously very broad, and therefore could include a garage. However:

1. Under subsection (1), "garages" is stated as distinct from "accessory structures": "the floor area of garages and accessory structures shall be included..." It is true that not all garages are accessory structures. By this code provision, the floor area of all garages (regardless whether they are accessory structures or not) and all accessory structures are included in the FA total.
2. In applying the Exception, we must recognize its text in context with the general requirement of subsection 1. The exception is only for "habitable areas of detached accessory structures". The context of garages in this subsection is separate and distinct from "detached

accessory structures.” For purposes of the exception, “habitable areas” is limited to “detached accessory structures” that are not garages.

3. If garages are included within “habitable” use because garages are “used, or intended for use on a day-to-day basis, by people for residential purposes,” there would be no need for the exception. Simply, if “garage” is a “portion of any building or structure used, or intended for use on a day-to-day basis, by people for residential purposes,” then all of the garage would therefore be habitable. The code could have simply said that 200 / 400 sq ft. of the garage was deducted from floor area. But the code text did not apply the exception to “garages and detached accessory structures” as stated in Subsection 1, it eliminated garages: ~~“garages and detached accessory structures”~~ in its use in Subsection 2.

Because of this conflict in the text, I look to the legislative history in an effort to ascertain the Council’s intended meaning. In looking at the legislative history, **I would conclude that “habitable” for the purpose of LOC 50.04.001.1.d.i(2) was not intended to include a garage, but rather the habitable areas of a detached accessory structure that would not have been included in FA prior Ord. 2524.** Here’s why:

- Prior to Ordinance 2524, garages were specifically excluded from floor area. This issue is explained in the yellow highlighted background information I copied and pasted further below, which is from the record for Ord. 2524 (LU 08-0053). Prior to the amendment to FA by Ord. 2524, the code relating to FA read as follows:
 - “4. The floor area of a garage area shall be exempt from lot coverage calculations:
 - a. Ground floor area of detached garage:
 - i. For lots less than or equal to 10,000 square feet in area – up to 200 square feet.
 - ii. For lots greater than 10,000 square feet in area – up to 400 square feet.
 - b. Floor area of attached garage located at or rear of the primary structure or for side-loading garages – up to 200 square feet.
 - 5. Habitable areas of detached accessory structures that would normally be counted as floor area shall be exempt from floor area calculations:
 - a. For lots less than or equal to 10,000 square feet in area – up to 200 square feet.
 - b. For lots greater than 10,000 square feet in area – up to 400 square feet.”
- The legislative history, below, shows that the purpose of changing the definition of FA was to include garages because two homes of the same size could have very different FA calculations depending on how big of a garage the homes have. This **was deemed to** result in an inequity because a dwelling with a larger garage would be allowed a larger home than a dwelling with a smaller garage, and it is ineffective in meeting the intent of the FA standard to limit the bulk and size of the structure.
- Ord. 2524 eliminated the Maximum FAR Table that used to prescribe the FAR based on the square-footage of the lot and replaced it with a formula for determining FA. That formula includes an allowance for a garage, which allows more FA when a garage is proposed on a lot

(see green highlighted text below). This was to make up for the loss of building square-footage because garages would now count towards FA.

- There was no amendment in Ord. 2524 to the portion of the FA standard that exempted habitable area of detached structures and no discussion that there was an intent to apply the FA exception to garages. Given that the newly adopted formula for determining FA had an allowance for a garage, it would also seem unnecessary that a further exemption to FA for a detached garage would be necessary.

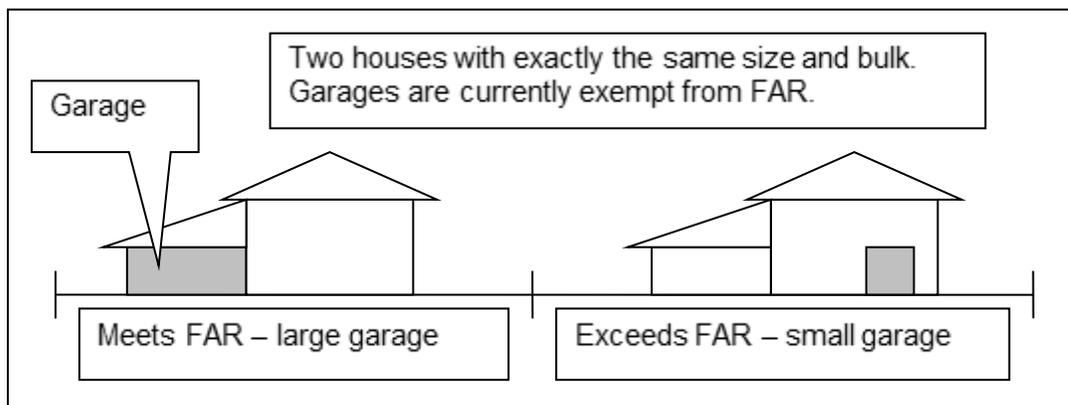
Floor Area Ratio

Concepts:

- Eliminate abrupt step changes with Current Floor Area Ratios (FAR).
- Amend the FAR standard to include garages.

Issues: Floor area ratio (FAR) requirements for single family residential development were enacted in 2003 and were intended to help manage the size of houses by making allowed floor area dependent on lot size. The current regulations use a table with a series of steps, rather than a mathematic formula to apply the FAR. The step system results in relatively large jumps or drops in house size when lot area changes by a few feet.

In addition, the FAR calculation does not count any floor area used for parking. This creates an inequity since two structures may have the same FAR but may actually differ in size depending on the design and number of garage stalls.



Proposal: The code was reformatted to divide Lot Coverage and FAR into two separate categories. Separate formulas were devised for allowed floor area in each base zone to allow for a smoother proportional relationship between house and lot size and to allow for a garage that is proportional to the house size. This will replace the discrete incremental change with a continuous functional relationship between house and lot size.

The formula for determining the allowed floor area in each zone follows the structure outlined below:

Allowed Floor Area	=	Base Floor Area (3000 sq. ft. in the SF zones)	+ Bonus Floor Area (Actual lot size – the size of the smallest lot allowed in the zone) x (size factor – 0.2 in the SF zones)	+ Garage Floor Area
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The proposal includes garages in the total floor area allowed. **To account for the loss in building square footage, a square footage allowance for garages has been included in the floor area formula.** Each formula has separate garage sizes that were derived through a study of garage sizes in each of the single family base zones. A smaller sample was used to establish the 500 sq. ft. garage size in the R-6 zone. Typically, garages were between 400 and 500 square feet in the zone. No garage data was available for the R-5 zone.

These garage sizes are listed below.

<u>Zone</u>	<u>Garage Size Allowed</u>
R-5	Up to 500 square feet
R-6	Up to 500 square feet
R-7.5	Up to 600 square feet
R-10	Up to 750 square feet
R-15	Up to 850 square feet

Code Section: Section 50.08.042, Section 50.07.037, and 50.06.035

Thank you,

Jessica Numanoglu, AICP | Planning Manager



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From: Hamilton, Leslie
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Subject: "habitable" area in accessory structure - Curt Olson

Has there been an interpretation on what “habitable” means regarding a garage, or is there research pending? We talked about it a few weeks ago in staff meeting, and now Curt is asking a lot of “what ifs” about the issue. I sure would like to have something definitive to respond with,.



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