

§ 255-11-63. Affordable accessory apartments.

A. General requirements. [Amended 12-1-2016 by L.L. No. 49-2016]

(1) The lot to which the affordable accessory apartment is to be added shall possess a certificate of occupancy for a single-family residence, be entitled to the issuance of a certificate of occupancy by virtue of preexisting status or have a valid building permit to construct a single-family residence, unless the owner of the property intends to obtain permits pursuant to this section to maintain an apartment constructed without approvals as an affordable accessory apartment.

(2) No more than one affordable accessory apartment shall be permitted on any lot.

(3) An affordable accessory apartment shall not be permitted on a lot on which there exists an artist studio, rooming house or boarders, home occupation, home professional office, preexisting accessory apartment, two-family detached dwelling or multiple-family dwelling. The owner of a single-family residence with an affordable accessory apartment may not also rent guest rooms pursuant to § 255-11-62C(3).

(4) An affordable apartment may not be sublet.

(5) No affordable accessory apartment shall be permitted if the result would be a residential density of more than two dwelling units per lot.

(6) In residence districts authorized by this chapter, an affordable accessory apartment may be maintained as a conditional accessory use only upon compliance with the requirements of this local law, the Code of the Town of East Hampton, the New York State Uniform Fire Prevention and Building Code and the conditions, rules and/or regulations of any other agency having jurisdiction.

(7) The rent charged for an affordable accessory apartment may not exceed the standards set forth in § 255-1-20, "affordable housing unit."

(8) No more than ~~40~~ 20 affordable accessory apartment permits or building permits for affordable accessory apartments shall be issued in each school district located within the Town of East Hampton. The total number of permits issued for affordable accessory apartments in the Town of East Hampton shall not exceed ~~400~~ 200. The permits will be issued on a first-come-first-served basis. See § 255-11-63C(3)(a)[1] for additional restrictions.

B. Site requirements.

(1) No violations of the Town Code shall exist at the time of application for an affordable accessory apartment; excepting those that may exist as part of an apartment constructed without approvals that is the subject of the application for an affordable accessory apartment. The Building Inspector shall inspect the premises upon receipt of a completed application, and the application shall not be processed until all outstanding violations are corrected.

(2) No affordable accessory apartment within a residence shall be constructed on a lot with a total lot area less than 20,000 square feet. No affordable accessory apartment within a detached structure shall be constructed on a lot with a total lot area less than 30,000 square feet. [Amended 12-1-2016 by L.L. No. 49-2016; 6-20-2019 by L.L. No. 26-2019]

(3) No affordable accessory apartment shall be permitted on any lot located wholly or partially within a Harbor Protection Overlay District or Affordable Housing Overlay District.

C. Permits required; conditional use.

(1) In order to construct an affordable accessory apartment, the owner shall apply for a building permit and obtain a temporary certificate of occupancy for the apartment from the Building Inspector. The apartment may not be occupied until an affordable accessory apartment permit from the Town Office of Housing and Community Development is obtained pursuant to § 255-11-63E herein. A permanent certificate of occupancy conditioned upon use of the apartment as an affordable accessory apartment as defined herein may not be issued by the Building Inspector until an affordable accessory apartment permit is issued.

(2) Building permit application. The owner of a single-family detached dwelling, when authorized by this chapter, may apply to the Building Department for a permit to construct an affordable accessory apartment. The application shall be in writing and in a form prescribed by the Building Inspector and acknowledged by the applicant in the form of an affidavit verified under oath. The application must contain:

(a) The name, address and contact information of the owner;

(b) The name, address and contact information of a person designated by the owner who is responsible for the property in the absence of the owner;

(c) The street and address of the premises at which an affordable accessory apartment is contemplated, together with its Suffolk County Tax Map description;

(d) A survey of the premises at which the affordable accessory apartment is contemplated, at a scale and size suitable for filing;

(e) If the affordable accessory apartment is proposed within a residence, a floor plan of the existing residence or proposed residence and one photograph of each of the front, rear and each side of the existing dwelling on the premises which is the subject of the application, as well as photographs depicting the location of any existing driveways, and if not included on the survey drawn to scale, showing all buildings, structures, walks, drives, other physical features of the premises and the location of and access to existing and proposed off-street parking; [Amended 12-1-2016 by L.L. No. 49-2016]

(f) If the affordable accessory apartment is proposed within a residence, a floor plan of the proposed dwelling as same shall exist after any alterations or modifications are made for such affordable accessory apartment; [Amended 12-1-2016 by L.L. No. 49-2016]

(g) If the affordable accessory apartment is proposed within a detached structure, a floor plan of the existing structure and one photograph of each of the front, rear and each side of the existing structure on the premises which is the subject of the application, as well as photographs depicting the location of any existing driveways, and if not included on the survey drawn to scale, showing all buildings, structures, walks, drives, other physical features of the premises and the location of and access to existing and proposed off-street parking; [Added 12-1-2016 by L.L. No. 49-2016]<sup>1</sup>

(h) If the affordable accessory apartment is proposed within a detached structure, a floor plan of the proposed dwelling as same shall exist after any alterations or modifications are made for such affordable accessory apartment; [Added 12-1-2016 by L.L. No. 49-2016]

(i) Proof of residency of the owner(s);

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<sup>1</sup> Editor's Note: This local law also redesignated former Subsection C(2)(g) through (k) as Subsection C(2)(i) through (m), respectively.

(j) Photo identification of the owner(s);

(k) A duly executed and acknowledged written consent of the applicant authorizing an inspection of the premises as set forth in § 255-11-63C(3)(a)(7);

(l) A duly executed and acknowledged written intention to construct an affordable accessory apartment in accordance with the provisions of § 255-11-63 of the Town Code;

(m) Any other information deemed necessary by the Building Inspector to assure the completeness of the application.

(3) Certificate of occupancy for an affordable accessory apartment will not be issued until:

(a) The property owner has such contracts, easements, covenants, deed restrictions, or other legal instruments running in favor of the Town which will ensure that:

[1] The principal dwelling is owner-occupied, except the owner shall be permitted to occupy an affordable apartment within a residence and rent the principal dwelling under the applicable, as determined by the Office of Housing and Community Development, affordable apartment guidelines and terms found herein, including but not limited to the rental limits set forth for an affordable housing unit pursuant to § 255-1-20 of the East Hampton Town Code. This exception shall be limited to up to ~~four~~ eight affordable accessory apartments within residences within each school district ~~and shall not apply to affordable apartments within detached structures.~~ [Amended 12-1-2016 by L.L. No. 49-2016]

[2] The apartment or any proprietary or other interest therein will not be sold to the tenant or any other party, except as part of a sale of the entire residence in which the apartment is located;

[3] The affordable accessory apartment will be used only for the year-round occupancy of an East Hampton Town resident;

[4] The affordable accessory apartment is the legal domicile of all tenants therein;

[5] Rent charged to the tenant of the apartment must be stated in the lease and is not to exceed that set forth for an affordable housing unit pursuant to § 255-1-20 of the East Hampton Town Code;

[6] All leases of the rental apartment shall be in writing, comply with § 255-11-63F and made available to the Office of Housing and Community Development and shall be for a minimum of a one-year term;

[7] The Building Inspector, or his/her designee, has the right to inspect the entire property, upon reasonable notice, for the purpose of determining whether the apartment and all other structures on the property are in compliance with the Code of the Town of East Hampton, the New York State Uniform Fire Prevention and Building Code and/or the rules and regulations of any other agency having jurisdiction. The failure to schedule an inspection after due notice from the Town or resisting, obstructing and/or impeding the agents, servants, officers and/or employees of the Town of East Hampton during an inspection of the premises shall be a violation of this local law and subject to the fines and penalties provided in the East Hampton Town Code;

[8] The Building Inspector, or his/her designee, has the right and the obligation in the event of an emergency as determined by the Building Inspector and upon notice to the property owner, to enter upon any portion of the premises to protect the health, safety and welfare of residents or perform any duty required of him/her under the Code of the Town of East Hampton, the New York State Uniform Fire Prevention and Building Code and/or the rules and regulations of any other agency having jurisdiction;

[9] No more than two persons are permitted to reside in the apartment;

[10] The apartment is properly constructed, maintained and used, and unapproved uses are excluded therefrom; ~~and~~

[11] Any other conditions deemed reasonable and necessary to ensure the immediate and long-term success of the apartment in helping to meet affordable housing needs in the community is met;

[12] An affordable accessory apartment may not be occupied until an affordable accessory apartment permit has been obtained from the Office of Housing and Community Development pursuant to § 255-11-63E of the East Hampton Town Code; and

(b) The Building Inspector has notified the Fire District in which the apartment is located, that an affordable accessory apartment has been constructed at that location.

#### D. Violations; presumptions.

(1) It shall be unlawful to use, establish, maintain, operate, occupy, rent or lease an apartment located within a single-family residence or detached structure unless legally preexisting in the Town of East Hampton without first having obtained an affordable accessory apartment permit. Failure or refusal to procure an affordable accessory apartment permit shall be deemed a violation of this local law. [Amended 12-1-2016 by L.L. No. 49-2016]

(2) In the absence of a valid affordable accessory apartment permit, there shall be a rebuttable presumption that a residence for a single family contains an illegal apartment which is being established, operated, used, occupied, rented, leased and/or maintained as a multiple-family residence in violation of law if any two or more of the following features are found to exist by any person authorized to enforce or investigate violations of the Code of the Town of East Hampton:

(a) More than one mailbox, mail slot or post office address;

(b) More than one doorbell or doorway on the same side of the building or dwelling unit;

(c) More than one gas meter;

(d) More than one electric meter;

(e) More than one connecting line for utility services;

(f) More than one satellite dish;

(g) Multiple bills for utility/cable television service;

(h) Separate entrances for segregated parts of the dwelling, including but not limited to bedrooms;

(i) Permanent partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including but not limited to the bedroom;

(j) A separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof;

(k) The inability of any occupant or person in possession thereof to have unimpeded and/or lawful access to all parts of the dwelling unit; or

(l) Two or more kitchens each containing one or more of the following: a range, oven, hotplate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator.

(3) If a property, building or dwelling is found to contain two or more of the features enumerated in Subsection D(2) herein, the Town may request that the owner of that property, building or dwelling unit submit to the Town a verified statement affirming that the property, building or dwelling unit meets all applicable zoning or building codes, ordinances and regulations of the Town of East Hampton. Failure to submit the requested statement as required by the Town shall be deemed a violation subject to the penalties contained in § 255-10-50. This section shall not prohibit the Town's enforcement agencies from taking any other action authorized by this Code in lieu of a request for a verified statement pursuant to this section.

E. Issuance of an affordable accessory apartment permit; conditions; lease; fees.

(1) Application. The owner of a single-family dwelling, where a certificate of occupancy has been issued for an affordable accessory apartment must apply to the Office of Housing and Community Development to maintain that affordable accessory apartment. The application shall be in writing and in a form to be prescribed by the Office of Housing and Community Development and acknowledged by the applicant in the form of an affidavit verified under oath. The application must contain:

- (a) Proof of residency of the owner(s);
- (b) Proof of residency of the tenant(s);
- (c) Photo identification of the owner and tenant(s);
- (d) A copy of the fully completed application to the Building Department for all necessary building permits;
- (e) A copy of the certificate of occupancy for the lot;
- (f) A copy of the lease between the owner and the tenant that complies with § 255-11-63F;
- (g) The name, address and contact information of a person designated by the owner who is responsible for the property in the absence of the owner;
- (h) Any other information that the Office of Housing and Community Development deems necessary to facilitate the rental of an affordable accessory apartment.

(2) Change in occupancy. Any change in the occupancy of the affordable accessory apartment must be reported to the Office of Housing and Community Development within 30 days of such change. Any changes in occupancy during the term of the lease must comply with all provisions of this local law.

(3) Permit fees. The fee for the initial permit application for an affordable accessory apartment permit shall be \$50, unless such application is made to legalize an otherwise illegal apartment, in which case the fee shall be \$500, which shall be nonrefundable and paid at the time of filing the application, in addition to any other fees required by the Building Department for a building permit.

(4) Permit renewal.

(a) Any permit issued under this local law may be renewed for an additional term of one year. A complete application pursuant to Subsection E(1) herein must be filed for a permit renewal. The filing fee for the renewal of an affordable accessory apartment shall be \$25.

(b) All fees for renewal of an existing permit shall be paid within 30 days of the expiration of the existing permit. All fees paid after 30 days of the expiration of the existing permit shall be subject to a late filing fee of \$50 in addition to the filing fee in Subsection E(4)(a) herein.

(c) Failure to renew an affordable accessory permit results in the presumption that an affordable accessory apartment is being operated, used, rented, leased and/or maintained by the new owner(s) in violation of law.

(5) Transfer of permits.

(a) An affordable accessory apartment permit may be transferred to a subsequent property owner by application as in the event of an original application and in accordance with Subsection E(1) herein.

(b) The application for a transfer of the affordable accessory apartment must occur within 90 days of the closing of title, and the main dwelling will be or is the principal residence of the new owner upon sale. Such transfer of the permit will not take effect until the new owner(s) submits a complete application and such application is approved by the Office of Housing and Community Development. In the event an application for a transfer of an accessory permit has not been filed by the new owner(s) in violation of this article, there shall be a presumption that an affordable accessory apartment is being operated, used, rented, leased and/or maintained by the new owner(s) in violation of law.

(c) Said transfer application shall be subject to Subsection E(1) and (4) herein and payment of the applicable fee.

(6) Term of permit. All permits issued hereunder shall be valid for a period of one year unless:

(a) A court of competent jurisdiction finds that the owners or tenants of the dwelling unit(s) located within the residence building are guilty of a violation of any provision of this local law;

(b) The permit is terminated by operation of law or order of the court;

(c) The permit is voluntarily surrendered by the property owner. Voluntary surrender of the permit must be done in writing to both the Building Inspector, the Office of Housing and Community Development and the East Hampton Town Board; or

(d) The certificate of occupancy is revoked pursuant to § 102-15B of the Code.

F. Lease. The lease between the owner and the tenant must be in writing and contain the following provisions:

(1) A minimum term of one year;

(2) No more than two persons are permitted to reside in the apartment;

(3) The apartment must serve as the year-round legal residence of the tenant, except where the owner occupies the apartment and tenant occupies the principal residence as permitted by § 255-11-63C(3)(a)[1]. Should the tenant occupy the principal residence, said principal residence must serve as the year-round legal residence of the tenant. [Amended 12-1-2016 by L.L. No. 49-2016]

(4) The tenant consents to an inspection upon reasonable notice by the Building Inspector, or his/her designee, for the purpose of determining whether the apartment and all other structures on the property are in compliance with the Code of the Town of East Hampton, the New York State Uniform Fire Prevention and Building Code and/or the rules and regulations of any other agency having jurisdiction. The failure to schedule an inspection after due notice from the Town or resisting, obstructing and/or impeding the agents, servants, officers and/or employees of the Town of East Hampton during an inspection of the premises is a violation of the East Hampton Town Code and subject to the fines and penalties provided herein;

(5) The right of the Building Inspector, or his/her designee, in the event of an emergency as determined by the Building Inspector and upon notice to the property owner, to enter upon any portion of the premises to protect the health, safety and welfare of residents or perform any duty required of him/her under the Code of the Town of East Hampton, the New York State Uniform Fire Prevention and Building Code and/or the rules and regulations of any other agency having jurisdiction; and

(6) The rent charged to the tenant is stated in the lease and is not to exceed the standards set forth in the definition of "affordable housing unit" contained in the East Hampton Town Code.

#### G. Occupancy requirements.

(1) One or more owners of the lot upon which the affordable accessory apartment is located shall reside within the principal dwelling, or in the affordable accessory apartment as permitted herein, as a year-round resident. The owner or owners in residence shall have no other primary residence and must demonstrate legal residency in the Town of East Hampton. [Amended 5-6-2008 by L.L. No. 9-2008; 12-1-2016 by L.L. No. 49-2016]

(2) (Reserved)<sup>2</sup>

(3) No more than two persons are permitted to reside in an affordable accessory apartment.

(4) The tenant must have established legal residency in the Town of East Hampton prior to occupying an affordable accessory apartment.

(5) Documents that may be requested to establish legal residency may include but are not limited to:

(a) Government-issued photo identification;

(b) New York State income tax forms;

(c) A voter registration card;

(d) A year-round lease for a residence in the Town of East Hampton with rent receipts; and

(e) Any other information the Office of Housing and Community Development deems necessary to the determination of residency.

#### H. Design requirements.

(1) The affordable accessory apartment shall be a minimum of 300 square feet and shall not exceed 600 square feet.

(2) The affordable accessory apartment shall not contain more than one conventional bedroom.

(3) No portion of a single-family dwelling structure or affordable accessory apartment shall utilize a cellar, attic or any portion thereof as habitable living space unless a variance is issued by the New York State Uniform Fire Prevention and Building Code Review Board or other agency having jurisdiction.

(4) At least two off-street parking spaces shall be provided for in a driveway on the lot for the affordable accessory apartment in addition to that parking already utilized by the property owner. The parking of vehicles of the owner and the tenant on the street or on any property other than the lot on which the

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<sup>2</sup> Editor's Note: Former Subsection G(2), regarding the owner-occupant maintaining an interest of 100% in the property, was repealed 5-6-2008 by L.L. No. 9-2008.

affordable accessory apartment is located or parking overnight of more than four vehicles on said lot shall be prohibited. [Amended 12-1-2016 by L.L. No. 49-2016]

(5) For affordable accessory apartments in single-family residences, all exterior entrance doors shall be located at the sides or rear of the dwelling. No exterior changes shall be made so as to alter the single-family appearance of the dwelling. [Amended 12-1-2016 by L.L. No. 49-2016]

(6) Any detached structure with an affordable accessory apartment shall meet principal structure setbacks as set forth in § 255-11-10 herein, except for in the front yard, where a detached structure with an affordable accessory apartment shall meet the accessory building setbacks. For a waterfront lot, the accessory front yard setback shall be applied for the yard fronting on the street. [Added 12-1-2016 by L.L. No. 49-2016]