

East Hampton Town Board

159 Pantigo Road
East Hampton, NY 11937

ADOPTED

RESOLUTION 2016-956



[www](http://www.easthamptonny.com)

Meeting: 08

DOC ID: 17237 A

SPH-NOPH for Affordable Accessory Apartments in Detached Structures

BE IT RESOLVED, that a public hearing is hereby scheduled to be held on a proposed Local Law amending Chapter 255 ("ZONING") of the East Hampton Town Code in order to permit affordable accessory apartments in detached structures within the Town of East Hampton, as more fully set forth in the text of the Local Law, said hearing to be held at the Town Hall Meeting Room, East Hampton Town Hall, 159 Pantigo Road, East Hampton, on Thursday September 1, 2016, at 6:30 p.m. or as soon thereafter as this matter may be heard, and said proposed Local Law to read as follows:

LOCAL LAW NO. OF 2016
INTRODUCTORY NO. 43 OF 2016

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION I. - FINDINGS AND OBJECTIVES:

This Local Law seeks to provide a greater opportunity to create a limited number of affordable accessory apartments within detached accessory structures, as there continues to be a demonstrated need for moderate income rental housing in the Town of East Hampton. In a recent amendment to the Community Housing Opportunity Fund Plan adopted by the Board in 2015, the Board has determined that this need may be met by allowing for affordable accessory apartments within detached structures. While affordable apartments within residences have been a permitted use in residential districts since **1984**, only a small number of permits have been applied for. The Town of East Hampton has always prohibited any type of living areas within detached structures, but the Board finds that a limited number of affordable apartments in detached structures will facilitate the need for affordable housing while still adhering to the principles of good planning. This local law will provide that affordable accessory apartments in detached structures will be a permitted use in residential districts and a special permitted use in most commercial districts. Moreover, this law will also correct any typographical errors within the residential use table with regard to accessory apartments in single family residences.

SECTION II. - TOWN CODE AMENDED:

The Town Code is hereby amended as follows.

§255-1-20. Definitions.

ACCESSORY BUILDING OR STRUCTURE

A building or structure which is a customarily incidental or subordinate to a main building or structure. This term shall not include a building which, in whole or part, is designed, equipped or used for cooking, living or sleeping purposes, **unless said accessory building or structure**

complies with the standards set forth in §255-11-63 as an affordable accessory apartment.
See "principal building or structure."

AFFORDABLE ACCESSORY APARTMENT

An apartment established as an affordable housing unit in conjunction with and as an accessory use to a detached single-family residence as part of the same structure **or within a detached structure** and that complies with the standards set forth in § 255-11-63.

AFFORDABLE HOUSING UNIT -- An apartment, single-family residence or unimproved lot, the cost of which makes it available to a moderate-income family as defined herein, specifically, to be considered an "affordable housing unit," the following limits shall apply:

A. Apartment or residence. An affordable apartment or single-family residence shall be one for which:

- (1) The maximum monthly rental (excluding utilities) does not exceed 110 % of the Fair Market Rent for Existing Housing^[1] promulgated for the ~~Nassau-Suffolk primary Metropolitan statistical area~~ **Nassau-Suffolk, NY HUD Metro FMR Area** and published annually in the Federal Register by the Secretary of the United States Department of Housing and Urban Development, pursuant to Section 8(c)(1) of the United States Housing Act of 1937 [42 U.S.C. § 1437f(c)(1)] and Part 888, Subpart A, Sections 111 -- 115, of Title 24, Subtitle B, of the Code of Federal Regulations (24 CFR 888.111-115). Starting the second year, such an affordable apartment or residence is leased and, thereafter, the maximum monthly rental may be adjusted annually in accordance with the Annual Adjustment Factor^[2] published annually in the Federal Register by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 8(c)(2)(A) of the Housing Act [42 U.S.C. § 1437f(c)(2)(A)] and Part 888, Subpart B, Sections 201, 202 and 203(3), of Title 24 of the Code of Federal Regulations [24 CFR 888.201, 202 and 203(3)].

(2) NO CHANGE

FAMILY, MODERATE INCOME -- A family whose aggregate annual income does not exceed the income limits for lower income families (i.e., families earning no more than ~~80%~~ **130%** of the median family income for a family of that size) promulgated for the ~~Nassau-Suffolk primary metropolitan statistical area~~ **Nassau-Suffolk, NY HUD Metro FMR Area** and published annually by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. § 1437a(b)(2)] and Part 813, Subpart A, Section 102, of Title 24, Subtitle B, of the Code of Federal Regulations (24 CFR 813.102).

§ 255-5-50. Specific Standards and Safeguards.

AFFORDABLE ACCESSORY APARTMENTS IN SINGLE-FAMILY RESIDENCES ON

RESIDENTIAL PROPERTIES IN COMMERCIAL DISTRICTS

DELETE 1 through 10 and add the following:

- (1) All dwelling units shall comply with standards set forth in §255-11-63; and
 (2) Site plan approval (Article VI) and architectural review approval (Article VII shall be obtained before issuance of any building permit or certificate of occupancy, and no special permit shall be issued until a public hearing, which hearing may be combined with the hearing required for site plan review, shall have been held.[1]

§255-11-23. Limitations on accessory buildings.

The term "accessory building" may include a private garage, garden shed, private greenhouse or other similar building conforming to the definition of "accessory building," but no accessory building on any residential property, shall have a gross floor area equal to or greater than 600 square feet except an artist's studio meeting the requirements of this chapter. No accessory building, other than a pool house of less than 200 square feet in gross floor area, or an artist's studio or an affordable accessory apartment meeting the requirements of this chapter, shall contain any bath, shower or plumbing facilities.

§255-11-63. Affordable accessory apartments.

A. General requirements.

- (1) No Change
 (2) No Change
~~(3) Apartments may not be constructed in accessory structures.~~
 (4) (3) An affordable accessory apartment shall not be permitted on a lot on which there exists an artist studio, rooming house or ~~boarders~~ boarders, home occupation, home professional office, pre-existing 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).
~~(5) (4) An affordable apartment may not be sublet.~~
~~(6) (5) No affordable accessory apartment shall be permitted if the result would be a residential density of more than two dwelling units per lot.~~
~~(7) (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.~~
~~(8) (7) The rent charged for an affordable accessory apartment may not exceed the~~

standards set forth in § 255-1-20, "affordable housing unit."

~~(9)~~ **(8)** No more than 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 100. The permits will be issued on a first-come first-serve basis.

B. Site requirements.

- (1) No Change.
- (2) No affordable accessory apartment shall be constructed on a lot with a total lot area less than ~~15,000~~ **20,000** square feet.
- (3) No Change.

C. Permits required; conditional use.

- (1) No Change.
- (2) No Change.
- (a) through (d) No Change.
- (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;
- (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;
- (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;
- (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;

(i) through (m) No Change.

(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 the affordable apartment 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;**

[2] through [12] No Change.

(b) No Change.

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 pre-existing 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.

(2) No Change.

(3) No Change.

E. No Change

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

(1) No Change.

(2) No Change.

(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. Should the tenant occupy the principal residence, said principal residence**

must serve as the year-round legal residence of the tenant.

- (4) No Change.
- (5) No Change.
- (6) No Change.

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.

(2) through (5) No Change.

H. Design requirements.

- (1) No Change.
- (2) No Change.
- (3) No Change.

(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 affordable accessory apartment is located or parking overnight of more than four vehicles on said lot shall be prohibited.**

(5) **For affordable accessory apartment 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.

(6) **Any detached structure with an affordable accessory apartment shall meet principal structure setbacks as set forth in §255-11-10 herein.**

§ 255-11-67 Additional regulations.

A. No Change.

(1) through (5) No Change.

(2) No accessory structure having living quarters shall be permitted, **except an approved affordable accessory apartment created pursuant to 255-11-63**. An accessory structure (other than **an affordable accessory apartment**, a pool house of no more than 200 square feet in gross floor area) which includes kitchen facilities of any type described in Subsection A(2) or which contains a bathroom, shower or plumbing facilities (with the exception of an approved artist's studio having only a sink) shall be deemed to be in violation of this section. The interior and exterior of the residence shall be designed for use by a single family, and, except in cases where an affordable accessory apartment is created pursuant to § 255-11-63 and Article V hereof, there shall be no facilities providing for the independent occupancy of a second family. A violation of the provisions of this subsection shall be punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment not to exceed six months, or both.

(3) through (6) No Change.

§255-11-10. Table

See attachment

SECTION III. Authority.

The proposed local law is enacted pursuant to NYS Town Law, Article 16, Municipal Home Rule Law §10(1)(ii)(a)(11) and (12).

SECTION IV. Severability.

If any section or subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

SECTION V. Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

AND BE IT FURTHER RESOLVED, that the Town Clerk is directed to publish a Notice of Public Hearing in the August 18, 2016 edition of the *East Hampton Star*;

NOTICE OF PUBLIC HEARING

Intro. #43 of 2016

NOTICE IS HEREBY GIVEN that the Town Board of the Town of East Hampton will

hold a public hearing at Town Hall, 159 Pantigo Road, East Hampton, New York, on Thursday, September 1, 2016, at 6:30 p.m., or as soon thereafter as this matter may be heard, to consider comments of all persons regarding the amendment of Chapter 255 ("ZONING") of the East Hampton Town Code in order to permit affordable accessory apartments within detached structures in the Town of East Hampton.

Any person who wishes to be heard with regard to the proposed local law may appear in person or by agent at the time of the hearing or by correspondence addressed to the East Hampton Town Board, c/o Town Clerk, 159 Pantigo Road, East Hampton, New York 11937, said correspondence to be received before the date and time of the hearing.

Copies of the proposed local law, sponsored by Councilperson Overby are on file in the Town Clerk's Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m.

LOCAL LAW ABSTRACT

Intro. # 43 of 2016

This proposed local law amends Chapter 255 (ZONING) of the East Hampton Town Code to allow for affordable accessory apartments within detached structures. The Town Board seeks to provide a greater opportunity to create a limited number of affordable accessory apartments within detached accessory structures, as there continues to be a demonstrated need for moderate income rental housing in the Town of East Hampton.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Sylvia Overby, Councilwoman
SECONDER:	Fred Overton, Councilman
AYES:	Burke-Gonzalez, Van Scoyoc, Overby, Overton, Cantwell