

Memo

July 16, 2013

From: Stacy Delarede, Building Inspector

To: Town Board

CC: Planning Board
Zoning Board of Appeals

As most of you are aware, I have proposed changes to Zoning Chapter 140-17 Accessory Apartments.

Please find attached a Draft of my proposal. The Draft is the chapter in its entirety. The reason for this is that it is re-arranged and many of the sections have verbiage changes to clarify requirements.

There are several changes and additions to the "requirements" for the approval of an Accessory Apartment but no changes to the "Actual Physical Requirements".

Those changes are as follows:

Changes:

From: The structure/use must be established prior to 8/14/1986

To: The structure/use must be established not less than 7 years prior to the application

From: Allowed in R-1, A1.5 & A-3

To: All districts where single family residences are permitted

Additions:

Must provide evidence that the structure/use was established not less than 7 years

Minimum Lot Area to include "Other" – MLA + .75% of MLA

Evidence of Owner Occupancy required

Conditions of Approval

Renewal of Special Use Permit 1 year

Renewal Fee if established by the Town Board

Language on Inspections as permitted by law

Deed restriction/covenant for detached structures to remain subordinate to principal use of the SFR on the same lot

I will be happy to be present at the Town Board Meeting to explain the reasons for the changes in the law and answer any questions you may have.

§ 140-17 Accessory apartments.

A. Accessory apartments within existing residential structures.

(1) In any zoning district of the Town of New Paltz that allows single-family residential uses as a permitted use, including those sub-districts of the Floodplain District where single family residences are allowed with site plan approval, a special use permit may be granted by the Planning Board of the Town of New Paltz for the creation of an accessory apartment within a residential structure that was lawfully constructed and used as a single-family residence for not less than seven years prior to the date that an application is made for the creation of an accessory apartment. Evidence of such use shall include the date of a duly issued certificate of occupancy for single-family residential use, designation of single family use on the tax roll or other records of the Town of New Paltz, or other evidence of use that the Planning Board finds adequate to establish that the single-family residential use has been established and maintained for not less than seven years.

For purposes of this subsection A, an "accessory apartment" shall be defined as a self-contained dwelling unit within a principal single-family residential structure, which accessory apartment shall be used as a dwelling unit for one or more individuals living together as a family having its own exterior entrance, but which dwelling unit will be and remain subordinate to the principal use of the single-family residence on the same lot.

(2) In addition to any applicable provision of the Zoning Law of the Town of New Paltz for the effective administration of its general and/or specific purposes, the following requirements shall be met before the issuance of a special use permit for an accessory apartment pursuant to this subsection:

(a) The principal residential structure wherein the accessory apartment is to be located must be occupied, at the time of application and at all times thereafter while the accessory apartment is established and maintained, as the principal domicile of the record owner of title. Evidence of ownership shall be evidenced by the last deed recorded in the office of the Clerk of the County of Ulster. Evidence that the residential structure is occupied as the principal domicile of the record owner may be established by an affidavit of the record owner, supported by voting records or such competent evidence as would sufficient to establish domicile to for purposes of voting.

(b) The accessory apartment shall be self-contained, with separate cooking, sleeping and sanitary facilities for use of its occupants.

(c) No exterior changes may be made to the principal residential structure which would alter its existing foundation or the existing roofline.

(d) The principal residential structure shall have only one exterior front entrance. All others shall be located at the side or at the rear of the structure.

(e) An accessory apartment shall be subordinate to the principal residential structure, and shall contain not greater than 35% of the total habitable space of the existing structure (See Chapter 2 of the Property Maintenance Code of NYS, "habitable space."). Any increase in the size of the total habitable space of the principal residential structure completed within seven years of the date of the application for such accessory apartment shall not be considered part of the total habitable space for purposes of this subsection.

(f) The conversion of any existing residence to accommodate an accessory apartment as defined herein shall be limited to one accessory apartment per principal residence.

(g) Parking for an accessory apartment pursuant to this subsection shall be on-site, shall consist of at least 1 1/2 spaces per dwelling unit and shall be designed and located as to be convenient without encroaching on any required yard area.

(h) Each principal residence and accessory apartment shall, at the time of the conversion, be within a structure on a single lot and shall conform in all respects to the provisions of this article, including yard setbacks and other bulk restrictions, unless a variance has been issued or the lot has been duly approved pursuant to a filed subdivision plan allowing a clustered plan of subdivision; provided, however, that due to site conditions (soil, topography, etc.) affecting sanitary septic disposal, additional lot area may be required by the Ulster County Health Department in order to expand the existing on-site sanitary septic system or provide a sufficient reserve area. In such case, no special permit may be issued unless the minimum lot area provided conforms to the requirements of the Ulster County Health Department.

(i) No special permit may be granted by the Town of New Paltz until the on-site sanitary septic system has been approved by the Ulster County Health Department as adequate to provide sanitary septic disposal for the proposed accessory apartment, except that the Planning Board may grant conditional approval of a special permit where it finds, on report and recommendation of the Town engineer, that the size and arrangement of the lot is such that such approval is reasonably likely to be issue. In such event, the Board shall include a condition that no building permit may be validly issued until the Health Department issues written approval of the on-site sanitary septic system.

B. Accessory apartments within existing detached accessory structures.

(1) In any zoning district of the Town of New Paltz that allows single-family residential uses as a permitted use, including those sub-districts of the Floodplain District where single family residences are allowed with site plan approval, a special use permit may be granted by the Planning Board of the Town of New Paltz for the creation of an accessory apartment within a detached accessory structure that has existed on a lot containing a principal residential structure that was lawfully constructed and used as a single-family residence for not less than seven years prior to the date that an application is made for the creation of an accessory apartment. Evidence of such use shall include the date of a duly issued certificate of occupancy for single-family residential use, designation of single family use on the tax roll or other records of the Town of New Paltz, or other evidence of use that the Planning Board finds adequate to establish that the principal residential use has been established and maintained for not less than seven years and that the accessory structure was lawfully constructed and maintained as an accessory structure for such time.

For purposes of this subsection B, an "accessory apartment" shall be defined as a self-contained dwelling unit within an existing accessory structure located on the same zoning lot as a principal single-family residential structure, which accessory dwelling unit will be used as a dwelling unit for one or more individuals living together as a family, and sharing the use of at least one of the following: water supply, sanitary septic field, or shared access drive to the street or highway serving the lot, and subject to an enforceable deed restriction or covenant ensuring that such dwelling unit will be and remain subordinate to the principal use of the single-family residence on the same lot.

(2) In addition to any provision of the Zoning Law of the Town of New Paltz for the effective administration of its general and/or specific purposes, the following requirements shall be met before the issuance of a special use permit for an accessory apartment pursuant to this subsection:

(a) The principal residential structure wherein the accessory apartment is to be located must be occupied, at the time of application and at all times thereafter while the accessory apartment is established and maintained, as the principal domicile of the record owner of title. Evidence of

ownership shall be evidenced by the last deed recorded in the office of the Clerk of the County of Ulster. Evidence that the principal residential structure is occupied as the principal domicile of the record owner may be established by an affidavit of the owner, supported by voting records or such competent evidence as would sufficient to establish domicile to for purposes of voting.

(b) The accessory apartment shall be self-contained, with separate cooking, sleeping and sanitary facilities for use of its occupants, except that the accessory apartment may share a water supply or sanitary septic field with the principal residential use.

(c) The construction of an accessory apartment within an existing detached accessory structure shall be subordinate to the principal residence and shall contain not greater than 35% of the total habitable space of the principal existing residential structure, as the structure existed seven years prior to date of the application for a special use permit to construct the accessory apartment (See Chapter 2 of the Property Maintenance Code of New York State for the definition of "habitable space."). *No exterior changes may be made to the accessory structure which would alter its existing foundation or the existing roofline.*

(d) No more than one accessory structure on a lot occupied by a principal residential structure may be converted to accommodate an accessory apartment as defined herein. In the event a lot containing an accessory apartment in a detached accessory structure is further subdivided, the lot containing the accessory structure shall contain sufficient lot area to meet the minimum lot area requirement of the zoning district in which the lot is located.

(e) Lot requirements.

[1] The existing detached accessory structure wherein the accessory apartment is to be located shall conform to the same setback requirements of this article as those required for the principal residence; in addition, each principal residence and accessory apartment shall, at the time of the application, be on a single lot with an area no less than the minimum specified in Table A set forth in this subsection.

Table A		
District	Minimum Lot Area (acres)	
R-1	1.75	
A-1.5	2.62	
A-3	5.25	
Other	Minimum lot area, plus .75 MLA	

[2] The lot area requirements in Table A are minimums only. Due to site conditions (soil, topography, etc.) affecting sanitary septic disposal, additional lot area may be required by the Ulster County Health Department in order to expand the existing on-site sanitary septic system or provide a sufficient reserve area. In such case, no special permit may be issued unless the minimum lot area provided conforms to the requirements of the Ulster County Health Department.

(f) Parking for an accessory apartment pursuant to this subsection shall be on-site, shall consist of at least 1 1/2 spaces per dwelling unit and shall be designed and located as to be convenient without encroaching on any required yard area.

(g) No special permit may be granted by the Town of New Paltz until the on-site sanitary septic system has been approved by the Ulster County Health Department as adequate to provide

sanitary septic disposal for the proposed accessory apartment, except that the Planning Board may grant conditional approval of a special permit where it finds, on report and recommendation of the Town engineer, that the size and arrangement of the lot is such that such approval is reasonably likely to be issued. In such event, the Board shall include a condition that no building permit may be validly issued until the Health Department issues written approval of the on-site sanitary septic system.

C. General conditions of permits, hearings, revocation of permits.

(1) Conditions of approval.

A, Applications for approval of an accessory apartment pursuant to this section shall be in accordance with § 140-55E, entitled "Special use permits," of the Zoning Law of the Town of New Paltz and shall be filed with the Planning Board. In addition to a determination that the application complies with all of the provisions of this chapter, the Planning Board shall grant such application and issue the required special use permit only after determining that the issuance of such special use permit will not adversely affect adjoining properties and the general surrounding neighborhood where the accessory apartment is proposed to be located. In the event that the Planning Board determines a proposed accessory apartment may adversely affect adjoining properties or the surrounding neighborhood, it may, as a condition of approving a permit, require that the applicant establish and maintain landscaping or fencing where necessary to avoid such adverse effects.

B. It shall be a condition of any such special permit, whether or not specifically incorporated therein, that (1) the owner shall maintain the accessory apartment use in conformance with the requirements of this section and all applicable provisions of the Uniform Fire Prevention and Building Code, including, but not limited to, the Property Maintenance Code of NYS; and (2) the special use permit shall be valid for a period of one year from the date that a Certificate of Occupancy is issued for the accessory apartment, and that it shall be automatically renewed upon

[a] a verified application by the record owner to the Building Inspector for renewal, attesting that the principal residence is maintained as the owner's domicile; and

[b] payment of a renewal fee, in such amount as established by resolution of the Town Board, provided the Building Inspector determines such use has been maintained in accordance with all requirements of Section 140-19 and any applicable conditions of approval.

C. If the Building Inspector determines at any time prior to renewal that the use has not been maintained in accordance with Section 140-19 or any applicable conditions of approval, the Building Inspector shall give notice of such determination to the record owner and the Planning Board. The Planning Board shall consider that determination in considering whether to renew the special use permit, and, if it determines that it intends to deny such renewal or to impose additional conditions on such renewal, the Planning Board shall give written notice of its intention to the record owner at the most recent address shown on the tax roll of the Town of New Paltz, and provide an opportunity for the record owner to be heard on the matter, and shall consider any evidence submitted by the record owner in support of the renewal of the special use permit. The Planning Board shall thereafter approve, approve with conditions or deny the special use permit, stating the reasons for its decision,

(2) Transfer of title. Within 60 days after the record owner transfers title to premises for which a special permit has been granted for an accessory apartment, the new record owner shall provide such evidence to the Building Inspector as may be necessary to demonstrate that the principal residential structure is occupied by the new record owner in accordance with Subsection A(2)(a) of this section. In the event that the new record owner fails to do so, the Building Inspector shall

serve a written notice upon the owner or occupant to do so by a date certain. In the event that the record owner fails to do so, the Building Inspector shall give notice of such noncompliance to the record owner and the Planning Board, and the Planning Board shall consider the determination in considering whether to renew the special use permit, and, if it determines that it intends to deny such renewal or to impose additional conditions on such renewal, the Planning Board shall give written notice of its intention to the record owner at the most recent address shown on the tax roll of the Town of New Paltz, and provide an opportunity for the record owner to be heard on the matter, and shall consider any evidence submitted by the record owner in support of the renewal of the special use permit. The failure of the Planning Board to take any action required by this section shall not constitute a waiver of such requirement. The Planning Board shall thereafter approve, approve with conditions or deny the special use permit, stating the reasons for its decision,

(3) Effect of denial of renewal. The Planning Board shall direct that the accessory apartment created pursuant to this section be vacated, its use as an accessory apartment created pursuant to this section be discontinued, and that all improvements installed to allow its use as an accessory apartment be removed.

(4) Inspections permitted. The Building Inspector, or a duly authorized designee of the Building Inspector, may perform a fire, safety and property maintenance inspection of the accessory apartment upon the request of the owner of the property to be inspected or an authorized agent of such owner or the occupant. In the event that the Building Inspector has a reasonable basis to believe that the accessory apartment or principal structure do not comply with applicable provisions of the special use permit, Chapter 140 or the Uniform Fire Prevention and Building Code, and the owner or an authorized agent or occupant does not consent to such inspection, the Building Inspector may apply for a warrant to permit such inspection. Nothing in this subdivision shall permit such inspection in such circumstances unless such warrant has been obtained.

§ 140-55 Zoning Board of Appeals.

E. Special use permits.

(1) The Board of Appeals shall have the power, after public notice and hearing, to grant special use permits in the classes of cases specified in § **140-8A** of this chapter.

(2) All applications for special use permits shall be filed with the Secretary to the Board of Appeals in writing, shall be made in a form required by the Board, and shall include a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot.

(3) Whenever the Board of Appeals grants a special use permit, appropriate conditions and safeguards and/or time limitations must be attached thereto so as to guarantee that the use of premises shall not be incompatible with other permitted uses in the vicinity and district in which subject property is situated.

(4) Any special use permit which is not exercised within one year from the date of issuance is hereby declared to be revoked without further hearing by the Board of Appeals.