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**§ 140-17 Accessory dwelling units.**

**[Amended 8-14-1986 by L.L. No. 3-1986; 8-14-1986 by L.L. No. 4-1986; 12-19-2013 by L.L. No. 3-2013; 8-3-2023 by L.L. No. 4-2023]**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

**ACCESSORY DWELLING UNIT (ADU)**

A second dwelling subordinate in size to the principal dwelling unit on an owner-occupied lot, in either the principal dwelling, attached to the principal dwelling, in an existing accessory structure or as an additional accessory structure. The ADU shall be a self-contained dwelling unit and used as a dwelling for one or more individuals living together as a family. It shall be located on a permanent foundation, have its own exterior entrance and remain subordinate to the principal dwelling. The dwelling unit is constructed so as to maintain the appearance and essential character of a one-family dwelling and any existing accessory structures and to maintain the existing residential character of the neighborhood. An accessory dwelling unit is not considered a two-family dwelling. A "tiny home," as that term is defined in the New York State Uniform Fire Prevention and Building Code, that is constructed on a movable frame may not be used as an accessory dwelling unit.

**ATTACHED ACCESSORY DWELLING UNIT**

Accessory dwelling unit attached as an addition either to the side, rear or above the existing principal dwelling or other lawful residential accessory structure.

**DETACHED ACCESSORY DWELLING UNIT**

Accessory dwelling units that are structurally separate from the principal dwelling unit or other residential accessory structure.

**DWELLING UNIT**

A building or portion thereof providing complete housekeeping facilities for one family.

**INTERIOR ACCESSORY DWELLING UNIT**

Accessory dwelling unit located within an existing principal dwelling unit or within a lawful existing residential accessory structure by means of the conversion of existing space with no exterior expansion of the existing structure.

**OWNER-OCCUPIED**

A building or structure containing one or two dwelling units within which at least one natural person in whose name record title to the property or building is held, has established, and maintains his or her primary residence and actually resides therein for at least nine calendar months during each calendar year. Upon request of the Town of New Paltz, any owner who claims to occupy a dwelling unit in such building shall provide an affidavit providing sufficient information to demonstrate the basis for his or her claim that the premises are owner-occupied.

**PRIMARY RESIDENCE**

The property an individual permanently occupies for the sole purpose of a private dwelling in which such individual actually resides for at least nine calendar months during each calendar year. The primary residence may be documented by the address listed on the individual's federal and state tax returns or NYS Star Exemption Status. A person shall be deemed to have one primary residence.

**PRINCIPAL DWELLING UNIT**

For the purpose of this section, a principal dwelling unit shall be the same as a single-family residence

or one-family dwelling and be the larger dwelling unit on the lot.

## **RESIDENTIAL ACCESSORY STRUCTURE**

A building located on the same lot as a one-family dwelling, the use of which is incidental and subordinate to the principal use of a one-family dwelling. Residential accessory structures include, but are not limited to, buildings such as detached garages, barns, workshops and art studios.

## **RESIDENTIAL LOT**

Any lot where one-family dwellings are permitted and the principal use of the lot is a one-family dwelling or to be developed as a one-family dwelling as the principal use. A residential lot is not considered to be a lot located within any business district where there exists a nonconforming dwelling or where such lot may be developed with multiple uses.

- B. Accessory dwelling units within an existing one-family dwelling or existing accessory structure.
- (1) In any zoning district of the Town of New Paltz that allows single-family residential uses as a permitted use, including those subdistricts of the Floodplain District where single-family residences are allowed with site plan approval, a permit may be granted by the Building Inspector or the Code Enforcement Officer for the creation of an accessory dwelling unit as defined in this section.
  - (2) The Code Enforcement Officer/Building Inspector shall have the authority to refer any applicant for an accessory dwelling unit to the Planning Board for site plan review, if, in the judgment of the Code Enforcement Officer/Building Inspector, the proposal may present site design challenges and other concerns that may not be adequately addressed through a building permit.
  - (3) In addition to any applicable provision of this section for the effective administration of its general and/or specific purposes, the following requirements shall be met before a permit for an accessory dwelling unit can be issued:
    - (a) The principal residential lot wherein the accessory apartment is to be located must be owner-occupied at the time of application and at all times thereafter while the accessory apartment is established and maintained. It shall be a condition of every certificate of occupancy issued for an accessory apartment that occupancy of such dwelling unit is only valid if the principal residential lot is owner-occupied, and the certificate of occupancy shall prominently display in bold print a statement that occupancy of such accessory apartment is not lawful and valid unless the single-family residence is owner-occupied. A certificate of occupancy issued without such statement shall not prevent enforcement of such condition.
    - (b) The accessory apartment shall be self-contained, with separate cooking, sleeping and sanitary facilities for use of its occupants.
    - (c) Any exterior changes made to the principal residential structure or any accessory structure shall maintain the appearance and essential character of a one-family dwelling and the existing residential character of the neighborhood.
    - (d) Any newly created entrances shall be at the side or rear of the structure. All lighting shall be dark sky lighting.
    - (e) An accessory dwelling unit shall be subordinate to the principal residential structure and shall contain not greater than 45% of the total of the legally finished area of the principal dwelling unit for which a building permit and certificate of occupancy was issued. In any case, no accessory dwelling unit shall be less than 350 square feet nor more than 900 square feet. A "tiny house home," as defined in the New York State Uniform Fire Prevention and Building Code, that is constructed on a movable frame may not be used as an accessory dwelling unit. Accessory dwelling units must be constructed on a permanent foundation.

- (f) The conversion of any existing dwelling to accommodate an accessory dwelling unit as defined herein shall be limited to one accessory dwelling unit per principal residence per lot.
  - (g) Parking for an accessory dwelling unit pursuant to this subsection shall be on site and, shall consist of at least 1.5 spaces per dwelling unit. Newly created parking spaces shall be designed and located to be convenient without encroaching on any required yard area. Garages and carports may be counted as parking spaces. For nonconforming lots of record, parking areas shall be screened with natural vegetation or fencing to avoid any adverse effects upon adjoining property owners.
  - (h) No permit may be granted by the Code Enforcement Officer 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 dwelling unit.
- C. Accessory dwelling units attached to an existing one-family dwelling, detached residential accessory structure or newly created accessory structure. In addition to any applicable provision of this section for the effective administration of its general and/or specific purposes, the following requirements shall be met before the issuance of a permit for an attached or newly created accessory dwelling units can be issued pursuant to this subsection:
- (1) The accessory dwelling unit shall be self-contained, located on the same residential lot as a principal single-family dwelling, 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.
  - (2) The accessory dwelling unit shall be self-contained, with separate cooking, sleeping and sanitary facilities for use of its occupants.
  - (3) Attached accessory dwelling units to a principal dwelling shall only be constructed to the side or rear of the structure and shall not encroach into any required yard. Accessory dwelling units attached to existing accessory structures shall not encroach into any required yard and shall maintain the separation distances pursuant to § **140-30A** of this chapter. No such addition shall create any new noncompliance or increase the degree of noncompliance to any preexisting, nonconforming structure. See § **140-44A** of this chapter.
  - (4) Any exterior changes made to the principal one-family dwelling or any accessory structure shall maintain the appearance and essential character of a one-family dwelling and the existing residential character of the neighborhood.
  - (5) Any newly created entrances shall be at the side or rear of the structure. All lighting shall be dark sky lighting.
  - (6) An accessory dwelling unit shall be subordinate to the principal residential structure and shall contain not greater than 45% of the total of the legally finished area of the principal dwelling unit for which a building permit and certificate of occupancy was issued. In any case, no accessory dwelling unit shall be less than 350 square feet nor more than 900 square feet. A "tiny house home," as defined in the New York State Uniform Fire Prevention and Building Code, that is constructed on a movable frame may not be used as an accessory dwelling unit. Accessory dwelling units must be constructed on a permanent foundation.
  - (7) No more than one accessory structure on a lot occupied by a principal residential structure may be converted to accommodate an accessory dwelling unit as defined herein. In the event a lot containing an accessory dwelling unit 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 and bulk requirements of the zoning district in which the lot is located.

- (8) Any newly created detached accessory structure to be occupied as an accessory dwelling unit must be in compliance with the Density Control Schedule as to yard requirements of the district in which it is located; provided, however, that notwithstanding the provisions set forth in § 140-48B(4) of Article VII of this chapter, in the event that: i) the lot upon which the accessory dwelling unit it to be located is nonconforming due to its area based on the district regulations in which it is located; and ii) such lot has sufficient area and dimensions to accommodate a detached accessory dwelling unit, including adequate septic facilities; and iii) such lot has a minimum lot width of at least 50 feet at the required setback line, the minimum yard dimensions shall be as specified in § 140-47A and B(1), (2), and (3) of this chapter.
- D. General conditions of permits/certificates of occupancy; hearings; revocation of certificate of occupancy.
- (1) Conditions of approval.
- (a) Applications for approval of an accessory apartment pursuant to this section shall be made to the Code Enforcement Officer or Building Inspector. In addition to a determination that the application complies with all the provisions of this section and the Uniform Fire Prevention and Building Code, the Building Inspector shall grant such application and issue the required permit only after determining that the issuance of such 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 Building Inspector or Code Enforcement Officer determines a proposed accessory apartment may adversely affect adjoining properties or the surrounding neighborhood, it may, as a condition of approval, require that the applicant establish and maintain landscaping or fencing where necessary to avoid such adverse effects or refer the applicant to the Planning Board for site plan approval.
- (b) Each principal dwelling unit and accessory dwelling unit shall, at the time of the conversion, be within a structure on a single lot, which has been legally created 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. Any principal residence on a single lot created prior to the adoption of this section, the area and/or lot width and/or lot depth of which are less than the respective minimum lot requirements specified for the district in which such lot is located, may be considered as complying with such minimum lot requirements and no variance shall be required.
- (2) It shall be a condition of any such certificate of occupancy, whether or not specifically incorporated therein, that:
- (a) 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 New York State; and
- (b) The certificate of occupancy shall be valid for a period of one year from the date that a certificate of occupancy is issued for the accessory apartment. Unless previously revoked, such certificate of occupancy shall be automatically renewed upon:
- [1] A verified application by the record owner to the Building Inspector for renewal, attesting that the principal residence is maintained as the owner's primary domicile; and
- [2] 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 § 140-17 and any applicable conditions of approval.
- (3) In the event that the Building Inspector determines at any time prior to renewal that the use has not been maintained in accordance with § 140-17 or any applicable conditions of approval or the certificate of

occupancy, the Building Inspector shall: a) give written notice of such determination to the record owner at the most recent address shown on the tax roll of the Town; and b) provide an opportunity for the record owner to be heard on the matter; and c) shall consider any evidence submitted by the record owner in support of the renewal of the certificate of occupancy; and d) render a final decision. Any record owner aggrieved by the final decision of the Building Inspector/Code Enforcement Officer may appeal such decision to the Zoning Board of Appeals pursuant to § 140-55C of this chapter.

- (4) 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 written evidence to the Building Inspector demonstrating that the residential lot is occupied by the new record owner in accordance with 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 within 10 days next following the date of such notice. 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 Building Inspector or Code Enforcement Officer shall be entitled to consider such noncompliance in determining whether to renew the certificate of occupancy. In the event that the Building Inspector/Code Enforcement Officer determines to deny such renewal or to impose additional conditions on such renewal, the Building Inspector or Code Enforcement Officer shall give written notice of such determination to the record owner at the most-recent address shown on the tax roll of the Town, 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 certificate of occupancy . The failure of the Building Inspector or Code Enforcement Officer to take any action required by this section shall not constitute a waiver of such requirement. The Building Inspector or Code Enforcement Officer shall thereafter approve, approve with conditions or deny the renewal of any permit for the creation of an accessory dwelling unit, stating the reasons for such decision.
- (5) Effect of denial of renewal. The Building Inspector or Code Enforcement Officer 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.
- (6) Appeal. Any record owner aggrieved by the final decision of the Building Inspector/Code Enforcement Officer may appeal such decision to the Zoning Board of Appeals pursuant to § 140-55C of this chapter.

E. Inspections permitted.

- (1) 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.
- (2) In the event that the Building Inspector has a reasonable basis to believe that the accessory apartment or principal structure does not comply with applicable provisions of the certificate of occupancy or of Section 140 or of the Uniform Fire Prevention and Building Code, and the owner or an authorized agent or occupant does not consent to a fire safety and property maintenance inspection, the Building Inspector may apply to a court of competent jurisdiction for a warrant to permit such inspection. Nothing in this subsection shall permit such inspection in such circumstances unless such warrant has been obtained.

F. Minimum term of rental. Accessory dwelling units shall be rented for a period of no less than 30 continuous days in duration. Owners shall be required to provide proof of rental agreement including the duration of the rental period to the Building Inspector/Code Enforcement Officer.

G. Violation of this section.

- (1) It shall be a violation of this section for an owner to offer for rent or occupancy any attached, detached or interior accessory dwelling unit without first having obtained a permit for the creation of an accessory dwelling unit as required by this section.
- (2) It shall be a violation of this section for an owner to fail to occupy any one-family residential dwelling for which a permit for the creation of an accessory dwelling unit as required by this section has been issued, established and maintained in accordance with the requirements of this section.
- (3) It shall be a violation of this section for an owner to fail to comply with any condition imposed by this section with respect to accessory dwelling units.

H. Penalties for offenses.

- (1) Any person who violates any of the terms of this section shall be deemed to have committed an offense against this section and shall be liable for any such violation or the penalty for such violation.
- (2) Each violation of this section is hereby declared to be an offense, punishable by a fine up to \$500 or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of one year, punishable by a fine not less than \$500 nor more than \$1,500 or imprisonment for a period not to exceed 15 days, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of two years, punishable by a fine not less than \$1,500 nor more than \$3,000 or imprisonment for a period not to exceed 15 days, or both. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this section (except for a first offense) shall be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.
- (3) Each day that the violation continues shall be deemed a separate violation.
- (4) In addition to the penalties provided above, any person violating this section shall be subject to a civil penalty, enforceable and collectible by the Town, not exceeding \$1,000 for a first offense; for a second violation committed within five years next following a first violation, to a civil penalty, enforceable and collectible by the Town, not exceeding \$2,000, and for each subsequent violation, to a civil penalty, enforceable and collectible by the Town, not exceeding \$3,500.
- (5) In addition to the penalties above provided, the Town Board may also maintain an action or proceeding in the name of the Town, in a court of competent jurisdiction, to compel compliance with or to restrain by injunction the violation of this section.
- (6) No penalty provided for by this section shall be deemed exclusive. The Building Inspector/Code Enforcement Officer shall have the discretion to seek one or more of the penalties provided herein in a court of competent jurisdiction.
- (7) The penalties for violation of this section shall be in addition to any penalties imposed for violation of other provisions of law including, but not limited to the Town Code, the New York State Uniform Fire Prevention and Building Code and the Executive Law.