

ARTICLE XIV, Accessory Apartments

§ 85-258. Accessory apartment standards and requirements. [Amended 10-16-1990, effective 11-4-1990; 9-8-1994, effective 10-3-1994; 5-8-1995, effective 6-5-1995; 4-16-1996, effective 5-6-1996; 12-3-1996, effective 12-23-1996; 9-18-1997, effective 10-6-1997; 3-17-1998, effective 4-6-1998; 2-26-2009, effective 3-22-2009, effective 4-10-13

A. Purpose. It is the specific purpose and intent of this article to allow accessory apartments in the A Residence, A Residence 1, A Residence 2, A Residence 5, B Residence, B Residence 1 and C Residence Districts to provide the opportunity and encouragement for the development of small rental housing units designed, in particular, to meet the special housing needs of single persons and couples of low and moderate income, both young and old, and of relatives of families presently living in the Town of Brookhaven. Furthermore, it is the purpose and intent of this article to allow the more efficient use of the Town's existing stock of dwellings to provide economic support of present resident families of limited income and to protect and preserve property values while preserving the character and quality of life of our communities. To help achieve these goals and to promote the other objectives of this article, specific standards are hereby set forth for such accessory apartment uses.

B. Standards.

(1) Owner occupancy required. The owner(s) of the lot upon which the accessory apartment is located shall reside within the dwelling that contains the accessory apartment. The owner may occupy either the larger dwelling unit or the accessory apartment. No other owner(s) shall own a larger percentage collectively or individually than the owner-occupant. A homeowner shall be permitted one accessory apartment only, and only one accessory apartment per dwelling shall be permitted.

(2) Location on lot. An accessory apartment shall be located in the principal dwelling.

(3) Provisional accessory apartment license. All qualified applicants are required to obtain a provisional accessory apartment license. When the Chief Building Inspector determines that the accessory apartment has been completed and that such accessory apartment may be occupied safely without endangering life, health or the public welfare, the Chief Building Inspector may issue a provisional accessory apartment license. All provisional accessory apartment licenses issued hereunder shall be valid for an initial period of up to three years and for successive renewal periods of up to five years at the discretion of the Accessory Apartment Review Board.

(4) Accessory apartment size. The minimum habitable area for an accessory apartment shall be 300 square feet and a maximum of 650 square feet; in no case shall it exceed 40% of the habitable area of the dwelling building in which it is located, except in certain compelling circumstances a maximum of 850 square feet may be approved, at the discretion of the Accessory Apartment Review Board, in accordance with Table #1 below. In no event may there be more than one bedroom per accessory apartment.

TABLE 1

Apartment Size (square feet)	Maximum Percentage of Habitable Space	Application
300 to 650	40%	Standard
651 to 750	35%	Board discretion
751 to 850	30%	Board discretion

- (5) Number of accessory apartments per lot. There shall be no more than one accessory apartment permitted per lot.
- (6) Exterior appearance. The entry to such unit and its design shall be such that, to the degree reasonably feasible, the appearance of the building will remain as a one-family residence.
- (7) Water and sewer service. Prior to issuance of a building permit for the establishment of an accessory apartment in a principal dwelling building, approval of the proposed method of water supply and sewage disposal shall be obtained from the engineer for the Town.
- (8) Off-street parking. In addition to off-street parking spaces as required for the principal dwelling under the Brookhaven Town Code, there shall be located on-site a minimum of one off-street parking space for use of the accessory apartment. The parking spaces and driveway thereto must be paved with asphalt, concrete or other similar materials.
- (9) Maintenance. All structures located on a lot on which an accessory apartment is located shall be maintained in a neat and clean manner, including but not limited to exterior shingles, paint, shutters and trim as well as landscaping and shrubbery. The premises and buildings shall comply with the New York State Property Maintenance Code and any amendments thereto, and all applicable provisions of the Town Code, including but not limited to Chapter 82, Neighborhood Preservation. No Accessory Apartment Review Board approval or provisional accessory apartment license shall be issued or shall be renewed where a violation exists on the premises or within the dwelling.
- (10) The principal structure as well as the accessory apartment must comply with all requirements for two-family dwellings as per the New York State Uniform Fire Prevention and Building Code and/or the laws and housing regulations of the State of New York, County of Suffolk and Town of Brookhaven.
- (11) All applications must be supplied by the owner(s) of the property, and the applicant shall be required to file an acknowledged statement with the Town of Brookhaven. This statement shall state that the provisional accessory apartment license for accessory apartment use and any extension of said provisional accessory apartment license shall terminate upon the death of the undersigned or the survivor of the undersigned, upon the transfer of title to said premises, upon the undersigned no longer occupying the premises as their principal residence or upon conviction for a violation of this section.
- (12) Every owner shall be required to file a sworn and notarized affidavit, representing to the Town that the owner is not a registered sex offender. The affidavit shall also state

that the owner is making such representations with full knowledge that the Town of Brookhaven is relying on these statements as a basis to issue a provisional accessory apartment license.

(13) The applicant shall be required to file a form stating that the subject dwelling and premises shall meet with all New York State Uniform Fire Prevention and Building Code requirements and all Town of Brookhaven requirements pertaining to provisional accessory apartment licenses for accessory apartments. The applicant will be required to meet these standards within six months of the granting of the building and zoning permit or the special permit will become null and void. Said time period may be extended by the Chairperson of the Accessory Apartment Review Board for up to an additional six months. In those instances where other governmental or outside agencies cause a delay in either issuing approval or certifying work, the Chief Building Inspector shall have the authority to grant additional time to the applicant in which to obtain the required provisional accessory apartment license.

(14) Limitations. Neither Accessory Apartment Review Board approval nor provisional accessory apartment license shall be issued for an accessory apartment in the event that 5% or more of the lots within a one-half-mile radius of the subject parcel contain accessory apartments. The Accessory Apartment Review Board may vary this requirement when, due to sparsity of development in the surrounding area, it is not practicable to maintain the five-percent cap on accessory apartments. This subsection shall not apply to applications filed within six months of the effective date of this article where the application is to legalize an accessory apartment preexisting the effective date of this article.

(15) It shall be unlawful for a property owner or person in charge of property to establish or maintain an accessory apartment if that property owner or person in charge of the property is a registered sex offender. For the purpose of this article, the term "registered sex offender" shall be defined as in § 55-2 of the Brookhaven Town Code.

(16) It shall be a violation to fail to meet the requirements of Article XVIII at any time there exists an accessory apartment.

C. Applications.

(1) There shall be submitted to the Building Division as follows:

- (a) An application to the Accessory Apartment Review Board for a special permit.
- (b) An application to the Building Division for all necessary building permits.

(2) The Accessory Apartment Review Board, as part of its application, may require the applicant to submit other items, including but not limited to floor plans, photographs, exterior renderings, etc.

(3) The application for a transfer of a provisional accessory apartment license to a subsequent property owner shall be on such forms and in such manner as shall be prescribed by the Accessory Apartment Review Board. The notice and hearing requirements of Subsection F(4) and (5) shall not apply to applications for transfer, except that the Chairperson of the Accessory Apartment Review Board shall have the authority to require a hearing on notice when, in his sole discretion, special circumstances exist which would require public input.

D. Fees.

(1) The application fee to the Accessory Apartment Review Board for a special permit or provisional accessory apartment license for the initial one- to three-year period shall be \$150. The application fee for the five-year renewal period shall be \$250. At the discretion of the Board, and upon a showing of extenuating circumstances, a permit may be renewed for less than the five-year period for a fee of \$50 per year.

(2) Upon failure to obtain a provisional accessory apartment license for the accessory apartment, within the total allotted time, the first reapplication fee will be \$300. For a second failure to obtain the provisional accessory apartment license in the allotted time, the second reapplication fee will be \$500. For any and all subsequent reapplications, the fee will be \$500. These increased reapplication fees also apply to renewals.

(3) The fee for a transfer for the unexpired term of a special permit or provisional accessory apartment license shall be \$50. All fees collected hereunder shall be allocated to the enforcement and administration of this article.

E. Accessory apartments shall not be permitted within an existing multifamily structure.

F. Accessory Apartment Review Board.

(1) The Accessory Apartment Review Board shall consist of three members appointed by the Town Board, one of whom shall be designated Chairperson. The Town Board may provide for compensation to be paid to said members and provide for such other expenses as may be necessary and proper. Of the members of the Board first appointed, one shall hold office for the term of one year, one for the term of two years and one for the term of three years; provided, however, that the Town Board may, by resolution, increase the number of members of the Accessory Apartment Review Board to five members and provide for their compensation, and thereafter such additional members shall be appointed for terms of one year and three years respectively. Their successors shall be appointed for the term of three years from and after the expiration of the terms of their predecessors in office.

(2) Such Accessory Apartment Review Board shall hear and decide applications for special permits to allow accessory apartments pursuant to this article.

(3) The Accessory Apartment Review Board shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this article. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings and records of its examinations and other official actions, all of which shall be a public record.

(4) All applications made to the Board shall be in writing, on forms prescribed by the Board. The Accessory Apartment Review Board shall fix a reasonable time for the hearing of the application and give public notice thereof, as well as due notice to the applicant. The applicant shall mail notice of the hearing by either certified or registered mail, return receipt requested, to every property owner, as shown on the current Brookhaven assessment rolls, owning property immediately adjacent and contiguous to that of the applicant. For purposes of this section, property separated from that of the application by a public road or right-of-way shall be deemed contiguous.

(5) The following shall be submitted with such application:

- (a) A copy of the notice sent to property owners.
- (b) A list, in duplicate, containing the names and addresses of the owners to who notices were sent.
- (c) Return receipts.
- (d) An affidavit of mailing of the aforesaid notices.
- (e) Three surveys giving the exact description and location of property with all existing and proposed structures and setback from all property lines.

G. Revocation. The Accessory Apartment Review Board shall retain the right to revoke any special permit or provisional accessory apartment license issued hereunder should the applicant or applicant's tenant violate any provision of this article or any condition imposed upon the issuance of the Board approval. Said revocation shall be after a hearing held on notice to the applicant and, if known, the tenant. As an alternative to revocation, the Accessory Apartment Review Board may continue the special permit or Provisional Accessory Apartment License on a probationary basis, and in such event, it may revoke the special permit or provisional accessory apartment license without further notice to the applicant or tenant upon a violation of any conditions attached to the probationary permit. Any property owner or person in charge of property who violates § 85-201B(15) shall have their special permit and/or provisional accessory apartment license immediately and automatically revoked upon such registration as a sex offender.

H. Lapse of approval for a special permit. Every application for a special permit granted by the Accessory Apartment Review Board shall be and become null and void and of no further force and effect unless the applicant obtains a building and zoning permit for work to be done and/or change of use no later than six months after approval is granted by the Accessory Apartment Review Board. In those instances where other governmental or outside agencies cause a delay in either issuing approval or certifying work, the Chief Building Inspector shall have the authority to grant additional time to the applicant in which to obtain the required building permit or other required approvals.

I. No person shall create or occupy an accessory apartment without obtaining an approval from the Accessory Apartment Review Board and a provisional accessory apartment license for said use from the Building Division.

J. It shall be unlawful and a violation of this chapter for any owner, person or entity to allow a provisional accessory apartment license to lapse without renewal or the obtaining of a building permit and subsequent certificate of compliance for the removal of the kitchen and reconfiguration of the residences to a one-family dwelling.

§ 85-201.1. Penalties for violations of accessory apartment regulations. [Added 2-26-2009, effective 3-22-2009]

A. Any person or corporation who shall violate the provisions in this article shall be punished pursuant to the provisions of § 85-432C of the Brookhaven Town Code.

B. For each violation of the provisions of § 85-201B(15), the property owner or person in charge of property shall be issued a notice of violation and shall take all necessary actions within 45 days of the date of the notice to remove the tenant(s) from the premises, and if, at the end of such period, the tenant(s) has not been removed and/or a

summary proceeding in a court of competent jurisdiction to remove such tenant(s) has not been commenced by the property owner, then such owner shall be deemed to have committed an offense against this chapter, and shall, upon conviction, thereof be subject to a fine or penalty of \$2,500 for a conviction of a first offense; upon the occurrence of a second or subsequent offense, the property owner or person in charge of property shall be deemed to have committed a misdemeanor and upon conviction thereof shall be subject to a fine or penalty of \$2,500 or imprisonment not exceeding six months, or by both such fine and imprisonment. Each week, or part thereof, such violation continues following the expiration of such 45 days shall constitute a separate offense punishable in like manner.