

Chapter 170. Zoning

Article XII. Special Exception Uses in Residence Districts

§ 170-70. Accessory apartments.

[Added 8-12-1982; amended 7-9-1992 by L.L. No. 11-1992; 5-18-1995 by L.L. No. 2-1995]

A special exception use permit may be granted by the Zoning Board of Appeals to permit accessory apartments. It is the specific purpose and intent of this provision to provide the opportunity 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 Somers. Furthermore, it is the purpose and intent of this provision to allow the more efficient use of the Town's existing stock of dwellings and accessory buildings, to provide economic support for present resident families of limited income and to protect and preserve property values. To help achieve these goals and to promote the objectives of the Town Development Plan, the issuance of a special exception use permit shall be subject to the following conditions, in addition to the general standards and requirements applicable to special exception use permits as set forth in § **170-106** of this chapter:

- A. The property and principal and accessory structures thereon shall conform to the lot area, yard and other requirements for the zoning district in which the property and structures are located unless a variance therefor shall have been granted by the Zoning Board of Appeals.
- B. An accessory apartment may be located within the principal dwelling building or in an accessory building, provided that such principal or accessory building was constructed or issued a building permit prior to April 1, 1992.
- C. The minimum size one-family building lot on which an accessory apartment may be located is 40,000 square feet. An accessory apartment may be permitted on a one-family lot with a smaller area only if, in the opinion of the Zoning Board of Appeals, an accessory apartment can be adequately accommodated within the existing principal dwelling building and it will not overburden the property. In no event shall an accessory apartment be permitted in an accessory building on a lot with an area of less than 40,000 square feet.
- D. The owner of the one-family lot upon which the accessory apartment is located shall occupy and maintain as his legal residence at least one of the dwelling units on the premises.

- E. The minimum floor area for an accessory apartment shall be 300 square feet and have a maximum floor area of 800 square feet. Each accessory apartment shall contain not more than one bedroom unless, in the opinion of the Zoning Board of Appeals, a second bedroom can be adequately accommodated within the existing building and will not overburden the property and the building was issued a certificate of occupancy prior to April 1, 1992. The Zoning Board of Appeals shall be responsible for determining the number of bedrooms in each dwelling unit in connection with its review of the special exception use permit application.
- F. There shall be no more than one accessory apartment permitted per one-family building lot.
- G. If an accessory apartment is located in the principal dwelling building, 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.
- H. Prior to the issuance of a building permit for the establishment of an accessory apartment in a principal dwelling building or the conversion of an existing accessory building to an accessory apartment use, approval of the proposed method and adequacy of water supply and sewage disposal shall be obtained from the Westchester County Department of Health and shall be further subject to engineering review by the Town.
- I. No less than one off-street parking space shall be provided per accessory apartment, plus one additional space for units having more than one bedroom.
- J. A special exception use permit for an accessory apartment shall be valid for a period of seven years or until six months after a transfer of title of the property, whichever occurs earlier. A permit may be renewed by the property owner upon application to the Zoning Board of Appeals. Within six months after a transfer of title, the new property owner may apply to renew the special permit. The Zoning Board of Appeals may extend a special permit for an additional period of six months following a transfer of title pending a determination on a renewal application. Action by the Zoning Board of Appeals to renew the permit for an additional term as set forth above shall not be taken until the Building Inspector conducts an inspection of the subject property and advises the Zoning Board of Appeals that the property continues to be in compliance with all conditions of the permit.
- K. The premises in which an accessory apartment is proposed to be located shall be inspected by the Building Inspector upon the application for a special permit and prior to the approval of the special permit. Each accessory apartment established as a special exception use shall be subject to inspection by the Building Inspector at any time. A finding of noncompliance with any condition or term of the permit shall result in revocation of the permit.
- L. A copy of the original special exception use permit and of each renewal permit, signed by the owner of the subject property, shall be filed in the office of the Building Inspector within 30 days of approval of the permit. The permit shall list all applicable conditions and the term of the permit and, in addition, state that the permit shall become null and void if any conditions are not complied with and if the owner of the property ceases to occupy one of the dwelling units on the premises as his legal residence.
[Amended 11-12-2015 by L.L. No. 4-2015]
- M. When, during the review of an application, the Zoning Board of Appeals finds that significant site work will be required to increase parking areas, to enlarge subsurface sewage disposal areas or to otherwise alter physical

site conditions, the Board shall condition the issuance of the special exception use permit on the applicant obtaining site plan approval by the Planning Board. In all other situations, site plan approval by the Planning Board shall not be required.

- N. An applicant for an accessory apartment special exception use permit to legalize an existing accessory apartment which does not have a special permit shall be charged an application fee in the amount of three times the regular application fee commencing for applications filed on or about April 1, 1996.
- O. The Zoning Board of Appeals shall be authorized to deny an application for an accessory apartment special exception use permit if the application does not meet the criteria set forth in this section or in § **170-106** or for the following reasons:
 - (1) The proposed use is not in the public interest, will create undue fire or traffic hazards, impair the character of the neighborhood or adversely affect property values or the layout and design of the use is not reasonably in keeping with the character of neighboring structures or would tend to undermine the stability of the area and taxes therefrom.
 - (2) The special permit use sought will not reasonably serve the public health, safety and general welfare or reasonably promote the purpose and intent of this section.
 - (3) The disadvantages of granting of special permit outweigh the benefits connected with the same.