

§ 211-22 Accessory apartments in single-family detached residences.

[Amended 5-1-1989 by L.L. No. 4-1989; 9-5-1989 by L.L. No. 7-1989; 8-19-1991 by L.L. No. 4-1991]

- A. Legislative intent. A special permit may be granted by the Planning Board to permit accessory apartments. It is the specific purpose and intent of this provision to provide the opportunity for the development of small, rental dwelling units designed, in particular, to meet the special housing needs of persons presently living in the Village of Buchanan. Furthermore, it is the purpose and intent of this section to maintain the single-family character of the residential districts of the Village of Buchanan without the overutilization of the land.
- B. To help achieve these goals and promote the objectives of the Village Development Plan, the issuance of a special permit and the granting of site development plan approval by the Planning Board shall be subject to the following requirements, and the Planning Board shall make the following as findings in addition to the general standards and requirements applicable to site development plans set forth in Article VII and special permits as set forth in Article X of this chapter.
 - (1) More restrictive provisions to prevail. In the R-7.5, R-10, R-15, R-20 and R-40 Residential Districts and in the C-1 and C-2 Commercial Districts, the property and structures shall comply with all applicable requirements for the zoning district in which the property is located, except that the regulations of this section shall apply when they are more restrictive.
 - (2) Occupancy.
 - (a) The owner of the single-family lot upon which the accessory apartment is located shall occupy the principal or accessory dwelling unit on the premises as his primary residence. **Ownership shall be evidenced by the last deed recorded in the office of the Clerk of the County of Westchester. Evidence that the dwelling is occupied as the principal domicile of such record owner may be established by an affidavit of the record owner, supported by voting records or such competent evidence as would be sufficient to establish domicile for purposes of voting.** It shall be a condition of every certificate of occupancy issued for an accessory apartment that occupancy of such dwelling unit is valid only if the unit is located in an owner-occupied, single-family detached dwelling, 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 detached dwelling is owner-occupied.
 - (b) No more than one accessory apartment shall be permitted on any lot.
 - (c) An accessory apartment shall be subordinate in area to the principal dwelling and shall be limited to occupancy by a maximum of two persons.

(3) Use.

(a) An accessory apartment shall not be permitted on a lot where the dwelling also contains either boarding or a home occupation as an accessory use.

(b) The principal use of the premises must be a single-family detached residence.

(c) No accessory apartment is permitted in an accessory building or structure.

(4) Maintenance and continued compliance. An accessory apartment shall be permitted only where all structures on the premises are in a reasonable state of repair and modernization and where all structures and any new construction undertaken for the accessory apartment shall be in compliance with Chapter 67, Building Construction, and the New York State Uniform Fire Prevention and Building Code as well as all other applicable regulations. The Building Inspector shall inspect the premises and shall report on the condition of structures on the premises to the Planning Board. No permit shall be granted until all outstanding violations are corrected. All conditions of the special permit must be complied with and shall be subject to inspection by the Building Inspector.

(5) Parking.

(a) Off-street parking shall be provided in accordance with the standards and requirements of §§ 211-10 and 211-19. The location of such parking and driveways shall be reviewed by the Planning Board to ensure compatibility with the use of the lot and adjacent properties.

(b) The foregoing conditions shall not be varied by any board in the Village of Buchanan in conjunction with an application for a special permit under this section.

(6) Other conditions.

(a) The Planning Board shall include but not limit consideration to the following circumstances. In making its determination on the special permit, the Planning Board shall also give consideration to the character of the existing and future uses in the immediate vicinity of the proposed accessory apartment, including the exterior appearance of buildings as single-family dwellings, the number of other accessory apartments existing in the neighborhood in relation to single-family dwellings and the amount of traffic and parking conditions in the neighborhood. The principal building must continue to appear to be a single-family residence.

The Planning Board may grant a special permit subject to the provisions set forth below:

(1) The proposed reuse will be in harmony with the appropriate and orderly development of the Village's Residential Zoning Districts.

- (2) The proposed reuse will not hinder or discourage the appropriate development and use of adjacent lands.
- (3) The proposed reuse is consistent with the policies and purposes of the Village's Local Waterfront Revitalization Program and Comprehensive Plan.
- (4) The proposed use is otherwise in the public interest.

- (b) Artificial illumination shall be installed at any entrance to any dwelling unit.

C. After the Planning Board has determined that the applicant has complied with the above requirements, the issuance of a special permit and the granting of site development plan approval, if necessary, by the Planning Board shall be further subject to the following requirements; however, the Planning Board shall have the power to modify the requirements, provided that said Board finds that such following modifications are consistent with the legislative intent of this section as set forth in Subsection A above and the purposes of this chapter as set forth in § 211-3:

(1) Age of structure and length of occupancy. The building in which the accessory apartment is constructed shall be at least 5 years old, and the owner applicant shall have occupied the dwelling for at least three years prior to the initial application for the special permit for an accessory apartment.

(2) Occupancy.

(a) **No more than one bedroom shall be permitted in any accessory apartment and shall be limited to a maximum of two (2) persons.**

(b) The minimum gross floor area for an accessory apartment within a principal building shall be 300 square feet but not larger than 600 square feet, and in no case shall it exceed 33% of gross floor area of the building in which it is located.

(3) Location of parking. No more than two off-street parking spaces shall be permitted in front of the principal building. **No off-street parking is permitted on Village streets between the hours of midnight to 7:00 am from December 1 – April 1. See, Village Code Chapter 189, Article 1, Section 185-4.**

(4) Other provisions.

(a) A second entrance on the front facade of the principal dwelling building shall not be permitted.

(b) Outside stairways and fire escapes for the accessory apartment shall be at the rear of the building.

D. In addition to the above requirements, the special permit for an accessory apartment shall be subject to the following conditions and procedures:

(1) Required submissions.

(a) In addition to the information required in §§ 211-27 and 211-42A of this chapter, the owner-applicant shall present to the Planning Board a floor plan of each habitable floor of the building, with all interior dimensions, including windows and doors, and with an assignment of spaces to the proposed dwelling units, including types of rooms. All plans shall be prepared in sufficient detail and by a licensed professional to enable the Planning Board to understand and decide upon the acceptability of the proposal.

(b) The special permit shall be issued to the owners of the property. Should there be a change in ownership or a change in the residence of the owner, the special permit and the certificate of occupancy for the accessory apartment shall become null and void. Thereafter, should the new owner decide to live in the structure and desire to continue the use of the accessory apartment, within 90 days of the change of ownership he shall apply to the Planning Board for a special permit. Should the new owner decide not to live in the structure or desire not to continue the use of the accessory apartment, the tenant shall have 90 days to relocate, the owner shall remove the kitchen of the accessory apartment within 60 days after the tenant leaves, and the premises shall revert to a single-dwelling unit.

(2) Term of permit. – **Renewals**

(a) The initial permit shall be valid for a period of one year, at which time the building department will notify the applicant of the expiration of the original special permit and that an application for an extension from the building department is required. Subsequent thereto, the special permit shall be valid for a period not to exceed three years. The exact term is to be determined by the building department. At the end of such period the building department shall require the owner /applicant to renew the permit or the owner shall notify the Building Inspector of his intent to discontinue the permit in accordance with the applicable time periods established in subsection D (1).

(b) The owner-applicant shall be required to file on the subject property a declaration of covenants at the Westchester County Clerk's office prior to the issuance of a special permit for an accessory apartment. This declaration shall be in favor of the Village of Buchanan and state that:

[1] The special permit for an accessory apartment or any renewal of said special permit shall terminate upon the death of the undersigned or the survivor of the undersigned or upon the transfer of title to said premises or upon the undersigned no longer occupying the premises as his principal residence.

[2] The new owner of the premises shall have to apply to the Planning Board for a special permit to continue the accessory apartment.

[3] The Building Inspector shall have the right to inspect the premises upon reasonable notice to the owner.^[1]

(3)Revocation of special permits.

a The Board of Appeals reserves the right to revoke any accessory apartment permit issued hereunder should the applicant or applicant's tenant violate any provision or any condition imposed upon the issuance of the special permit. Said revocation shall be after a hearing held by the Board of Appeals. The standard notification requirements for a hearing on a new accessory apartment applicant shall apply

If the Building Inspector determines at any time after a permit is issued or renewed that the use has not been maintained in accordance with the requirements herein or any applicable conditions of approval, the Building Inspector shall issue a compliance with notice and order pursuant to the Village Code. If the violation(s) is/are not timely remedied as required by such order, the building inspector shall notify the Planning Board of such noncompliance. In such event, the Planning Board shall make the final determination whether the permit shall be revoked or renewed. The Planning Board shall consider the Building Inspector's findings in evaluating whether to revoke or renew the accessory apartment permit; and if it determines that it intends to revoke the permit or deny such renewal or to impose additional conditions on such renewal, the Planning Board shall give written notice of its intent to the record owner at the most recent address shown on the tax roll of the Village, 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 or continuation of the accessory apartment permit. The Planning Board shall thereafter approve, approve with conditions, deny or revoke the accessory apartment permit, stating the reasons for its decision. Nothing herein shall limit or prevent the Building Inspector from proceeding under and enforcing any other provision of the Village Code, including, but not limited to, Chapter 63 (Unsafe buildings and structures), Chapter 137 (property maintenance inspections) and enforcement of all penalties for offenses.

(7)

Effect of revocation or denial of renewal. In the event of a final determination by the Planning Board to revoke a permit or deny the 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.

Alternatiely, we could specifically list reasons for revocations. – again, this is the Board's call, not mine.

b All permits granted under this article may be revoked by the Zoning Board of Appeals upon application of the Village Attorney's office or the Building Inspector for any of the following reasons:

- (1)** Failure to maintain the necessary requirements as outlined in this article, or occurrence of unlawful activities at or about the premises;
- (2)** There is fighting or violent, tumultuous or threatening behavior by any occupant of the premises as determined by the Board;
- (3)** There is unreasonable noise from the premises on a regular basis as determined by the Board;
- (4)** There are repeated calls to the police for disturbances and/or disputes at the premises;
- (5)** There is obstruction of vehicular or pedestrian traffic due to vehicles from or at the premises;
- (6)** There is a hazardous or physically offensive condition created by an act of an occupant of the premises;
- (7)** For existing violations of the Village Code on the premises;
- (8)** When violations of any state or local law exist on the premises;
- (9)** Any other reason where the Board finds it is in the best interest of the community to revoke the permit due to health, welfare and safety concerns.

[1]

Editor's Note: Original §§ 54-22 and 54-23 of the 1971 Code, entitled "Commercial and industrial planned development groups" and "Residential planned development groups," respectively, which immediately followed this subsection, were repealed 9-5-1989 by L.L. No. 6-1989.