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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**Town of Brookhaven**

**Local Law No. 3 of the year 2024**

**Be enacted by the Town Board of the Town of Brookhaven as follows:**

**Amend Chapter 85 entitled “Zoning” and Chapter 28 entitled “Code of Ethics and Disclosure” and Chapter 7A entitled “Business Practices” of the Code of the Town of Brookhaven**

**Section 1. Legislative Intent.** It is the intent of these amendments to Chapter 85 entitled “Zoning”, Chapter 28 entitled “Code of Ethics and Disclosure” and “Chapter 7A entitled “Business Practices” to eliminate the Accessory Apartment Review Board, designate their responsibilities to the Chief Building Inspector and to provide additional off-street parking requirements to mitigate impacts to the surrounding neighborhood.

**Section 2. Text Amendment.** Chapter 85 entitled “Zoning”; Section 85-258 entitled “Accessory Apartments” is hereby amended as follows:

**§ 85-258 Accessory apartments.**

**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. Dwellings owned by Entities including, but not limited to, limited-liability companies, corporations, small corporations, partnerships and professional corporations, are expressly prohibited from obtaining a provisional accessory apartment license.

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

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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 Chief Building Inspector.

**(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 Chief Building Inspector, in accordance with Table 1 below. In no event may there be more than one bedroom per accessory apartment.

**Table 1**

| <b>Apartment Size (square feet)</b> | <b>Maximum Percentage of Habitable Space</b> | <b>Application</b>                         |
|-------------------------------------|--|--|
| 300 to 650                          | 40%  | Standard                                   |
| 651 to 750                          | 35%  | <b>Chief Building Inspector</b> discretion |
| 751 to 850                          | 30%  | <b>Chief Building Inspector</b> 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.** A minimum of two off-street parking spaces shall be required for the resident-owner and there shall be located on-site a minimum of one designated off-street parking space for use of the accessory apartment occupants. Tandem stalls shall count as one off-street parking space. Said spaces shall be depicted on a plan submitted to the Chief Building Inspector at the time of application. The designated off-street parking space for the accessory apartment occupants shall be utilized by the accessory apartment occupants only. The parking spaces and driveway thereto must be paved with asphalt, concrete or other similar materials. The use of gravel or other permeable materials shall not be permitted. Failure to comply with these requirements after the issuance of the provisional accessory apartment license shall be deemed to be grounds for revocation pursuant to Section G below.

**(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 provisional accessory apartment license shall be issued or shall be renewed by the Chief Building Inspector 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 his/her principal residence or upon conviction for a violation of this section.**

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**(12)** 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 approval of the provisional accessory apartment license will become null and void. Said time period may be extended by the Chief Building Inspector 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.

**(13)** Limitations. No approval by the Chief Building Inspector 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 Chief Building Inspector 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 section where the application is to legalize an accessory apartment preexisting the effective date of this section.

**(14)** It shall be a violation to fail to meet the requirements of this section at any time there exists an accessory apartment.

**C. Applications.**

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

**(a)** An application for a provisional accessory apartment license

**(b)** An application for all necessary building permits.

**(2)** The **Chief Building Inspector**, 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)**

**(A)** Upon being notified in writing by the Chief Building Inspector that the application is deemed complete, the applicant is required to provide notice of the pending application by the conspicuous placement along each road frontage of the property which is the subject of the application at least one poster, in such form as proscribed by the Chief Building Inspector, and a fee set by Town Board resolution.

(i) Such posters shall contain the following information, in readable condition:

1. A brief description of the application; and
2. That any person interested in this application and who wishes to become a party of interest may contact the Building Division within 10 days of the poster being set.

(ii) Said poster must remain in place for a minimum of 10 consecutive days after the application is deemed complete and must be removed no later than two days after the posting period is completed. Proof of posting, including two pictures of the poster, one indicating the wording on the poster and the second indicating the location of the poster in front of the property, along with an affidavit of posting, must be submitted to the Building Division

**(4)**

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 Chief Building Inspector. The notice and hearing requirements of Subsection **F(4)** and **(5)** shall not apply to applications for transfer, except that the Chief Building Inspector shall have the authority to require a hearing on notice when, in her/his sole discretion, special circumstances exist which would require public input.

**D. Duration and fees.**

**(1)** All accessory apartment licenses shall be effective for a period not to exceed two three years. Fees shall be established by Town Board resolution.

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(2) All accessory apartment license renewals shall be effective for a period not to exceed five years. Fees shall be established by Town Board resolution.

(3) All accessory apartment licenses may be transferred to a new owner for the duration of the unexpired term. The transfer fee shall be as established by Town Board resolution.

(4) The application fee to the for a provisional accessory apartment license for the initial one- to three-year period shall be established by Town Board resolution. The application fee for the five-year renewal period shall be established by Town Board resolution. 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 as established by Town Board resolution.

(5) Upon failure to obtain a provisional accessory apartment license for the accessory apartment within the total allotted time, the first reapplication fee will be as established by Town Board resolution. For a second failure to obtain the provisional accessory apartment license in the allotted time, the second reapplication fee will be as established by Town Board resolution. For any and all subsequent reapplications, the fee will be as established by Town Board resolution. These increased reapplication fees also apply to renewals.

(6) Upon failure to renew a provisional accessory apartment license for the accessory apartment within the total allotted time, the first reapplication fee will be as established by Town Board resolution. For a second failure to obtain the provisional accessory apartment license in the allotted time, the second reapplication fee will be as established by Town Board resolution. For any and all subsequent reapplications, the fee will be as established by Town Board resolution.

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

F. Revocation. The **Chief Building Inspector** shall retain the right to revoke any provisional accessory apartment license issued hereunder should the applicant or applicant's tenant violate any provision of this section 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 Chief Building Inspector may continue the provisional accessory apartment license on a probationary basis, and in such event, it may revoke the 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 Subsection **B(15)** shall have his/her provisional accessory apartment license immediately and automatically revoked upon such registration as a sex offender.

G. Lapse of approval for a provisional accessory license. Every application for a provisional accessory license granted by the Chief Building Inspector 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. 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.

H. No person shall create or occupy an accessory apartment without obtaining an approval from the Chief Building Inspector and a provisional accessory apartment license for said use from the Building Division.

I. 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.

**Section 3. Text Amendment.** Chapter 28 entitled "Code of Ethics and Disclosure"; Section 28-6 entitled "Political activities prohibited" is hereby amended as follows:

**§ 28-6 Political activities prohibited.**

A. No person shall engage in any political activities on any Town premises at any time. Such prohibited activities include but are not limited to the following:

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( 4 )

- (1) Sales or purchases of tickets to political events.
  - (2) Discussion of tickets to political events.
  - (3) Solicitation to join a political party or activity.
  - (4) Discussion of promotions or transfers or changes of assignments or compensation on the basis of any political considerations.
  - (5) Solicitation of funds or goods or services for political purposes.
- B.** No person having supervisory control or who is superior in title to any officer or employee of the Town shall engage in any of the following actions with subordinates at any time on or off Town premises:
- (1) Discussion of or solicitation of ticket purchases or sales.
  - (2) Solicitation to join a political party or political activity.
  - (3) Use of political considerations in discussing duties, positions, compensation, changes in titles or work assignments.
  - (4) Use of political considerations as the reason for promotions, assignment changes, demotions or termination.
- C.** No officer or employee of the Town shall solicit or discuss political contributions with Town vendors or consultants at any time, on or off Town premises.
- D.** No elected Town officer, Bingo Inspector or any person holding an appointed office on the Town's Board of Ethics, Planning Board, Zoning Board of Appeals, Assessment Review Board, Industrial Development Agency or Local Development Corporation shall hold a position on any Town, county, state, or national duly recognized political party's executive committee.
- E.** No officer or employee may use or permit the use of any Town computer, printer, software, or any other related Town resources for political activity.

**Section 4. Text Amendment.** Chapter 7A entitled Business Practices"; Section 7A-24 entitled "Definitions" is hereby amended as follows:

§ 7A-24Definitions.

As used in this article, the following terms shall have the meanings indicated:

**APPOINTED OFFICIAL**

All members of the Zoning Board, Planning Board, Board of Assessment Review, Board of Ethics and Bingo Inspectors.

**ELECTED OFFICIAL**

The Supervisor, Highway Superintendent, Town Clerk, Tax Receiver, and all members of the Town Board.

**IMMEDIATE FAMILY**

Spouse, grandfathers, grandmothers, grandsons, granddaughters, fathers, mothers, stepfathers, stepmothers, sons, daughters, stepsons, stepdaughters, brothers, sisters, uncles, aunts, nieces, nephews, first cousins, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, daughters-in-law, or sons-in-law and the spouses of any members of the employee's immediate family. Immediate family also includes a person who is in a spouse-like relationship to the employee.

**Section 5. Authority.** The Town Board is vested with the authority to make these amendments pursuant to Town Law Sections 130 and 265, and in conformance with Municipal Home Rule Law Sections 10 and 20.

**Section 6 Effective date.** This local law shall become effective immediately upon filing with the Secretary of State of the State of New York.



Kevin J. LaValle, Town Clerk  
Town of Brookhaven

Dated: February 22, 2024  
Farmingville, New York

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