TOWN OF WAPPINGER
20 MIDDLEBUSH ROAD
WAPPINGERS FALLS, NY 12590
www.townofwappinger.us

Zoning Administrator
Barbara Roberti X128
Office: 845-297-6257
Fax: 845-297-0579

Building Inspector
Susan Dao X126

Accessory Apartment Checklist

THE FOLLOWING ITEMS MUST BE PRESENTED TO THE ZONING ADMINISTRATOR ON THE SUBMISSION DATE:

___ **Accessory Apartment Application / Building Permit**

___ **Clear & Convincing proof of a family relationship**: Needed documentation may be comprised, but not limited to the following.

1. Birth Certificate
2. Baptismal Certificate
3. Census Papers
4. Marriage License
5. Naturalization Papers

____ **Copy of Deed**

____ **Location of Property:** If apartment is to be in a detached structure, show the location on the property with existing setbacks.

____ **Two sets of plans are required.**
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. (Plans shall be prepared in sufficient size and detail to enable the Building Inspector to determine compliance with the requirements for an accessory apartment.)

____ **Declaration of Covenants**: *This is an extremely important document and should be reviewed with your attorney. Declaration must comply with all requirements identified in Section 240-53(I). The Declaration must be recorded in the Dutchess County Clerk's Office prior to issuance of a Building Permit and/or Certificate of Occupancy.*

____ **The application must contain original signatures of property owner(s)**

____ **Accessory Apartment Application Fee: $750.00**.
A $300.00 non-refundable application fee is due at the time of the filing of the application with the remaining $450.00 due prior to issuance of the permit. Building Permit Fees to be determined.

____ **Building Permit:** Must open building permit for renovations prior to issuance of Accessory Apartment permit.

APPLICATION FEES ARE NON-REFUNDABLE.

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WAPPINGERS FALLS, NY 1 2590

___ **Dutchess County Health Department Approval** will be needed unless premises are serviced by community sewer.

___ **See attached copy of Section 240-53 ACCESSORY APARTMENTS**
Please take special notice of the following conditions:

a. Change of ownership.
b. Maintenance & continued compliance.
c. Renewal inspections.

**********Please be aware that failure to comply with this code may result in the following fines.**

1. **First offense maximum: $350.00 a week**
2. **Second offense maximum: $700.00 a week**
3. **Third offense maximum: $1,000.00 a week**

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Fax: 845-297-0579

Building Inspector
Susan Dao X126

Accessory Apartment Application

Application #: _____ Date Received: _____
Fee Received: _____

In accordance with the Provisions of Section 240-53 of the Town of Wappinger Zoning Code, I/We hereby make application to the Zoning Administrator for the issuance of an Accessory Apartment permit for the use of:

Applicant(s):_____

Proposed Family
Member/Occupant:_____

Phone Number: _____ Zoning District:_____

Occupancy of Apartment(Limited to three Persons)_____

Mailing Address:_____

Tax Grid Number:_____

Year House was built:_____ Square Footage of House:_____
The exterior appearance of the building will remain that of a one-family residence.

*Proposed Square Footage of Apartment:_____
The accessory apartment shall not exceed 35% of the gross floor area of said dwelling and in no event shall exceed 1,000 sq. ft. of gross floor area. The minimum gross floor area shall not be less than 300 sq. ft. Only one accessory apartment shall be permitted on any lot.

*Deed - Copy of last recorded deed attached:_____

*Proof of family relationship:_____
_____
_____
_____

Please see attached Accessory Apartment Permit Requirements.
Accessory Apartment Application

I/We have, as part of these concurrent applications, submitted a "statement of use" which fully describes the operation and maintenance of said use listed in the application: (Use Extra Sheet)

I/We hereby certify that the above information is true and accurate and can be relied upon by the Town in issuing the Accessory Apartment Permit. In the event of false or inaccurate information the permit may be revoked.

Signature:_____ Signature:_____

Print Name:_____ Print Name:_____

Approved On: _____

Zoning Administrator:_____

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss:
COUNTY OF DUTCHESS)

On _____, 20__, before me, the undersigned, personally appeared _____ known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF DUTCHESS)

On _____, 20__, before me, the undersigned, personally appeared _____ known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

Town of Wappinger, NY
Thursday, December 20, 2018

Chapter 240. Zoning

Article VIII. Supplementary Special Permit Use Regulations

§ 240-53. Accessory apartments.

[Amended 9-24-2001 by L.L. No. 5-2001; 4-14-2003 by L.L. No. 4-2003; 6-27-2005 by L.L. No. 6-2005]

A. Legislative intent. It is the specific purpose and intent of this provision to provide the opportunity for the development of small dwelling units designed, in particular, to meet the special housing needs of relatives of families living in the Town of Wappinger and the housing needs of persons who are 55 years of age and older. Furthermore, it is the purpose and intent of this section to allow the more efficient use of the Town's existing stock of dwellings, to protect and preserve property values and to maintain the one-family character of the one-family residence districts of the Town of Wappinger without the overutilization of the land, consistent with the Town Comprehensive Plan.
[Amended 5-27-2014 by L.L. No. 6-2014]

B. Standards. Accessory apartments shall comply with the following standards:

(1) Minimum lot area: not applicable.

(2) Required occupancy. The owner of the property upon which the accessory apartment is located shall occupy the principal or accessory dwelling unit on the premises as his/her primary residence. An occupant of at least one of the dwelling units on the property shall be the father, mother, son, daughter, brother, sister, grandparent, grandchild, father-in-law or mother-in-law of an occupant of the other dwelling unit on the property. Notwithstanding the above, if said relative vacates the dwelling unit, the owner-applicant may apply for a transfer of the certificate of occupancy and/or certificate of compliance for the accessory apartment for occupancy by a nonfamilial person who is 55 years of age or older, subject to compliance with the following requirements:
[Amended 5-27-2014 by L.L. No. 6-2014]

(a) The owner of the property upon which the accessory apartment is located shall occupy the principal or accessory dwelling unit on the premises as his/her primary residence.

(b) The nonfamilial person who is 55 years of age or older may occupy the principal or accessory dwelling unit with or without one other person who is at least 21 years old.

(c) Said nonfamilial occupants shall have the use of not more than two on-site parking spaces.

(d) The minimum lot size of the property shall be at least 80,000 square feet.

(3) Number of accessory apartments. Only one accessory apartment shall be permitted on any lot.

(4) Maximum size. An accessory apartment shall be subordinate in area to the principal dwelling. The accessory apartment shall not exceed 35% of the gross floor area of said principal dwelling and in no event shall exceed 1,000 square feet of gross floor area.
[Amended 5-27-2014 by L.L. No. 6-2014; 5-14-2018 by L.L. No. 6-2018]

(5) Minimum size. The minimum gross floor area for an accessory apartment shall be 300 square feet.

(6) Maximum occupancy. The accessory apartment shall be limited in occupancy to three persons.

(7) Principal use. The principal use of the premises must be that of a detached one-family dwelling.

(8) Age of one-family dwelling. A one-family dwelling must be in existence for at least five years prior to an application for an accessory apartment.
[Amended 5-14-2018 by L.L. No. 6-2018]

(9) Access.
[Amended 5-14-2018 by L.L. No. 6-2018]

(a) In the event that an accessory apartment is provided with an externally located entrance separate from that of the one-family dwelling in which it is located, such entrance shall be located on the side or rear of the one-family dwelling.

(b) Any outside stairways and/or fire escapes for the accessory apartment shall be at the rear or side of the building.

(10) Exterior appearance. To the degree reasonably feasible, the exterior appearance of the building will remain that of a one-family residence.

(11) Utilities. Unless the premises is serviced by a community sewer or water system, approval of the Dutchess County Health Department shall be obtained prior to issuance of a building permit, certificate of occupancy and/or certificate of compliance.

(12) Maintenance and continued compliance. An accessory apartment shall be permitted only where all structures on the premises are in compliance with the Uniform Code and Zoning Code. The Building Inspector shall not issue a certificate of occupancy and/or certificate of compliance until the accessory apartment complies with all sections of the Uniform Code of the State of New York and the Town Code and until violation(s) of the Uniform Code and Town Code, if any, have been corrected.

(13)

Parking. Off-street parking shall be provided in accordance with Article **X** of this chapter.

C. An applicant failing to meet any of the above conditions may apply to the Zoning Board of Appeals for a variance.

D. Application. An application for an accessory apartment must contain sufficient information to demonstrate compliance with each of the standards set forth in § **240-53B** as determined by the Zoning Administrator, including but not limited to the following information:
[Amended 5-27-2014 by L.L. No. 6-2014]

(1) 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.

(2) Plans shall be prepared in sufficient size and detail to enable the Building Inspector to determine compliance with the requirements for an accessory apartment.

(3) Clear and convincing proof of a family relationship or other requirements, as applicable, as stipulated in § **240-53B(2)**.

(4) The declaration of covenants and restrictions stipulated in § 240-531.

(5) An application review fee as set forth in § **122-16N(9)(a)** of the Code.

E. Certificate of occupancy, Upon certification by the Zoning Administrator that the applicant has complied with all conditions of this chapter, the Building Inspector shall be authorized to issue a certificate of occupancy for an accessory apartment.

F. Renewal inspections. Each accessory apartment shall be reviewed and/or inspected by the Zoning Administrator every year in order to determine whether the apartment remains in compliance with this chapter. Upon the determination of such compliance, the Zoning Administrator shall issue a certificate of occupancy and/or certificate of compliance. The Zoning Administrator may require an affidavit, certification and/or other acceptable proof from the owner of the apartment verifying the continued existence of the family relationship or other requirements stipulated by § **240-53B(2)**. In the event that the inspection determines that the apartment is no longer in compliance with this chapter, the certificate of occupancy and/or certificate of compliance shall be revoked. The certificate of occupancy and/or certificate of compliance, once issued, shall be valid for a period of one year, provided that the owner-applicant complies with the terms of this chapter. In the event of noncompliance with this chapter, the certificate of occupancy and/or certificate of compliance shall be revoked, and the time periods established in § **240-53** for discontinuing accessory apartments shall apply. In the case of nonfamilial occupancy, as described in § **240-53B(2)** herein, an annual renewal inspection fee as set forth in § **122-16N(9)(b)** of the Code shall be paid to the Town.
[Amended 5-27-2014 by L.L. No. 6-2014]

G. Change in ownership. Upon a change in ownership or a change in the residence of the owner-applicant, the certificate of occupancy and/or certificate of compliance for the accessory apartment shall terminate. A new owner-applicant may apply for permission to maintain an accessory apartment pursuant to this chapter. The new owner-applicant shall submit an application as authorized by this chapter and provide the Zoning Administrator with clear and convincing proof of the family relationship required in § **240-**

53B(2). In the event that the new owner-applicant decides not to live in the structure or is not otherwise able to continue the use of the accessory apartment as authorized by this chapter, the owner-applicant shall have 60 days to remove the stove(s), oven(s), sink(s) and refrigerator(s) in the kitchen of the accessory apartment and to convert the premises back solely into a one-family dwelling unit.
[Amended 5-27-2014 by L.L. No. 6-2014]

H. Change in family relationship. Upon a change in the family relationship as required in § **240-53B(2)**, the certificate of occupancy and/or certificate of compliance for the accessory apartment shall terminate 60 days after such change. Notwithstanding the above, the owner-applicant may apply pursuant to § **240-53D** for a transfer of the certificate of occupancy and/or certificate of compliance, provided that the owner establishes compliance with the family relationship or other requirements stipulated in § **240-53B(2)**. The owner-applicant shall provide the Zoning Administrator with clear and convincing proof of such family relationship or other requirements stipulated in this chapter. In the event that the new owner-applicant cannot establish the family relationship or other requirements stipulated in this chapter, the owner-applicant shall have 60 days to remove the stove(s), oven(s), sink(s) and refrigerator(s) in the kitchen of the accessory apartment and to convert the premises back solely into a one-family dwelling unit.
[Amended 5-27-2014 by L.L. No. 6-2014]

I. Declaration of covenants and restrictions. The owner-applicant shall be required to execute a declaration of covenants and restrictions to be recorded in the Dutchess County Clerk's Office and indexed against the subject property, prior to the issuance of a certificate of occupancy and/or certificate of compliance for the accessory apartment. The declaration of covenants and restrictions shall be in favor of the Town of Wappinger and shall state that:
[Amended 5-27-2014 by L.L. No. 6-2014]

(1) 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 or her principal residence, the new owner shall apply to the Zoning Administrator for a transfer of the certificate of occupancy and/or certificate of compliance in accordance with § **240-53G** of the Town of Wappinger Zoning Law.

(2) The new owner of the premises shall have to apply to the Zoning Administrator for a transfer of the certificate of occupancy and/or certificate of compliance to continue the accessory apartment within 30 days of closing and transfer of title.

(3) Upon a change in the family relationship required by § **240-53B(2)**, the owner shall apply to the Zoning Administrator for a transfer of the certificate of occupancy and/or certificate of compliance in accordance with § **240-53H** of the Town of Wappinger Zoning Law. In this case, the owner of the premises shall have to apply to the Zoning Administrator for a transfer of the certificate of occupancy and/or certificate of compliance to continue the accessory apartment within 30 days of the change in family relationship.

(4) As a condition for permission to maintain an accessory apartment, the Building Inspector and/or the Zoning Administrator shall have the right to inspect the premises upon reasonable notice to the owner.

DECLARATION OF COVENANTS AND RESTRICTIONS FOR ACCESSORY APARTMENT IN TOWN OF WAPPINGER

This **DECLARATION OF COVENANTS AND RESTRICTIONS**, made on the ___ day of _____, 20___ by **Insert Name Exactly as on Deed** _____, with an address of (**Address** _____) hereinafter referred to as the "DECLARANT(S)/PARCEL OWNER(S)", in favor of the TOWN OF WAPPINGER, a municipal corporation with its principal office located at Town Hall, 20 Middlebush Road, in the Town of Wappinger, Dutchess County, New York hereinafter referred to as the "TOWN".

WITNESSETH:

WHEREAS, DECLARANT(S) is the owner of a certain parcel of property having a common street address of _____, which is more particularly described in a certain deed from _____ to _____ dated _____, which was recorded in the Dutchess County Clerk's Office on _____ (in Liber of Deeds _____ page _____) or (as Document No. _____), hereinafter referred to as the "Parcel"; and

WHEREAS, the DECLARANTS are desirous of establishing/constructing an accessory apartment on the Parcel in accordance with the Town of Wappinger Zoning Code §240-53; and

WHEREAS, the Town Zoning Code § 240-53 establishes certain standards for the construction and/or maintenance of an accessory apartment as a pre-condition to the issuance of a Building Permit for the construction of same or prior to the issuance of a Certificate of

Occupancy and/or Certificate of Compliance which will authorize occupancy of such accessory apartment; and

WHEREAS, as a precondition to the issuance of a Building Permit, Certificate of Occupancy or Certificate of Compliance for the construction or creation of such accessory apartment, Zoning Code §240-53 provides that the owner/applicant shall file a Declaration of Covenants and Restrictions containing the information set forth herein and indexed against the subject Parcel at the Dutchess County Clerk's Office prior to the issuance of a Building Permit, Certificate of Occupancy or Certificate of Compliance for such accessory apartment.

NOW, THEREFORE, DECLARANT does hereby declare that the Parcel described in Schedule "A" attached hereto shall be held, sold and conveyed subject to the following covenants, restrictions and agreements:

1. **Recitations Incorporated**. The recitations above set forth are incorporated in this DECLARATION as if fully set forth at length herein.

2. **Covenants and Restrictions.**

2.1 *Parties.* The DECLARANT(S)/PARCEL OWNER(S) shall use the accessory apartment only in accordance with the standards set forth in the Town Zoning Code §240-53, and any Certificate of Occupancy or Certificate of Compliance issued to the DECLARANT(S)/PARCEL OWNER(S) for such accessory apartment shall run only to the benefit of the DECLARANT(S)/PARCEL OWNER(S) herein and **shall not run with the land**. It is expressly understood that the accessory apartment shall only be used by the class of persons identified in Town Zoning Code §240-53 and subject to the standards set forth therein.

2.2 *Change in Circumstances, Transfer, Death or Cessation of Occupancy.* Upon a change in the family relationship, upon the death of the undersigned, or the survivor of the undersigned, or upon the transfer of title to the Parcel, or upon the undersigned no longer occupying the Parcel as his or her principal residence, the new owner/occupant shall apply to the Zoning Administrator for the transfer of the Certificate of Occupancy and/or Certificate of Compliance in accordance with §240-53.

2.3 *Renewal.* The new owner of the Parcel must apply to the Zoning Administrator within twenty (20) days of acquiring title to the Parcel for a transfer of the Certificate of Occupancy and/or Certificate of Compliance to authorize the continued use of the accessory apartment in accordance with §240-53.

2.4 *Inspection.* The DECLARANT(S)/PARCEL OWNER (S) acknowledge that the Municipal Code Enforcement Officer (Building Inspector) or the Zoning Administrator shall have the right to inspect the premises upon reasonable notice to the owner; failure to permit inspection will result in revocation of the Certificate of Occupancy or Certificate of Compliance.

3. **Enforcement**.

3.1 The DECLARANT(S)/PARCEL OWNER(S) hereby covenants that the Town of Wappinger, or any successor municipality (each an "Enforcement Entity"), shall have the right to enforce the rights, duties and obligations imposed by this DECLARATION by any proceeding at law or in equity, against any person or persons violating, or attempting to violate any covenant, restriction or obligation contained herein, to restrain a violation thereof, or to

require specific performance for the duties and obligations herein imposed pursuant to Town Zoning Code § 240-53, to recover damages for any violations thereof, to seek any penalties or

fines imposed for any violations of § 240-53 and to enforce any obligations to remove the accessory operation as required herein.

3.2 The expenses of enforcement by any Enforcement Entity, shall be chargeable to the party violating these covenants, restrictions and obligations, and shall be deemed a lien against the Parcel. Damages shall be deemed to include attorney's fees and disbursements incurred for the successful prosecution of any lawsuit to enforce the terms, covenants and restrictions of this DECLARATION. Failure by the Town of Wappinger or any Enforcement Entity to enforce any of the provisions of this DECLARATION shall in no event be deemed a waiver of any subsequent right to enforce any such violations at a future time. The expense of such enforcement is hereby deemed to be a charge and lien on such Parcel.

4. **Partial Invalidity/Separability.** The provisions of this DECLARATION are separable and if any provision, clause, sentence, sub-section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the other remaining provisions, clauses, sentences, sub-sections, words or parts of this DECLARATION or their application to the Parcel or other persons or circumstances. It is hereby stated to be the intention of the DECLARANT(S)/PARCEL OWNER(S) that this DECLARATION would have been established if such illegal, invalid or unconstitutional provision, clause, sentence, sub-section, word or part had not been included therein, and if such person or circumstance to which

the DECLARATION or part thereof is held inapplicable, had been specifically exempted therefrom.

IN WITNESS WHEREOF, this DECLARATION has been executed as of the date and year above written.

_____

_____*Type Name*_____, Declarant

_____

_____*Type Name*_____, Declarant

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss:
COUNTY OF DUTCHESS)

On _____, 200__, before me, the undersigned, personally appeared _____ known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF DUTCHESS)

On _____, 200__, before me, the undersigned, personally appeared _____ known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public