

LOCAL LAW FILING

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

(Use this form to file a local law with the Secretary of State)

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.

County
City
Town of Phelps
Village

Local Law No. 5 of the year **2024**

A Local Law Amending the Code of the Town of Phelps to Add Regulations Pertaining to Accessory Dwelling Units

(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County
City
Town of Phelps as follows:
Village

Section 1. Purpose and Findings

It is the intent of this Local Law to establish procedures, regulations and requirements for allowing accessory dwelling units in the Town of Phelps.

The Town of Phelps, in an effort to encourage housing diversity and affordability within the Town, recognizes that accessory dwelling units provide a housing option to persons in need of rental housing within the Town. Additionally, owners of properties with a single-family dwelling can benefit from increasing their revenues to offset some of the expenses of owning a home in the Town. Accessory dwelling units also can provide housing options for extended families and caregivers.

Section 2. Section 111-3 of Chapter 111, Short-Term Rentals, of the Code of the Town of Phelps is hereby amended as follows:

A. A definition of “ACCESSORY DWELLING UNIT” is hereby inserted to read as follows:

ACCESSORY DWELLING UNIT: A dwelling unit that is located on a lot with an existing single-family dwelling, is attached to or detached from such single-family dwelling, is subordinate in size to such single-family dwelling, provides complete

independent living facilities for one or more persons, includes permanent provisions for living, sleeping, eating, cooking and sanitation and has a certificate of occupancy authorizing its use as an accessory dwelling unit pursuant to an approved special use permit.

B. The definition of “DWELLING” is hereby repealed and a new definition of “DWELLING” is hereby inserted in its place to read as follows:

DWELLING: Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons intended for nontransient use. Manufactured and modular homes are included. Recreational vehicles, travel trailers and accessory dwelling units are not included.

Section 3. Chapter 145, Zoning, of the Code of the Town of Phelps is hereby amended as follows:

A. Paragraph B. of Section 145-4, Word usage; definitions, is hereby amended to add the following definition:

ACCESSORY DWELLING UNIT: A dwelling unit that is located on a lot with an existing single-family dwelling, is attached to or detached from such single-family dwelling, is subordinate in size to such single-family dwelling, provides complete independent living facilities for one or more persons and includes permanent provisions for living, sleeping, eating, cooking and sanitation.

B. The Town of Phelps Schedule of Regulations, identified in §145-8 of the Town of Phelps Zoning Ordinance and attached to the Town of Phelps Zoning Ordinance, is hereby amended with the insertion of a new Special Permitted Use in i) the R-AG Residential/Agricultural District, ii) the R-1 Residential District, iii) the C-1 Commercial District and iv) the M-1 Industrial District to read as follows:

Accessory dwelling units, in accordance with § 145-20.3

C. Paragraph D. of § 145-8.1 (Neighborhood Commercial District) is hereby amended with the insertion of a new subsection (6) to read as follows:

(6) Accessory dwelling unit

D. Article V., Special Uses, is hereby amended with the insertion of a new § 145-20.3 to read as follows:

§ 145-20.3 Accessory dwelling units

A. Purpose. Accessory dwelling units are intended to provide the following benefits:

(1) Increase the supply of rental housing in the Town.

- (2) Encourage the creation of alternative long-term housing that may meet the needs of persons seeking a smaller dwelling unit; and
- (3) Encourage a more efficient use of existing housing stock.
- (4) Encourage our aging population to “age in place”
- (5) Create housing expansion for our local workforce.
- (6) Provide options for young and older families
- (7) Protect and preserve property values while preserving the rural character of the town.

B. Zoning districts. An accessory dwelling unit is permitted in all zoning districts where a single-family dwelling is allowed as a permitted use or special use, in conformance with this section and all other applicable sections of the Zoning Law.

C. General requirements and standards.

- (1) No more than one (1) accessory dwelling unit may be attached to the single-family dwelling on the premises.
- (2) One (1) or more accessory dwelling units may be constructed by conversion of an existing, detached, accessory building located on the same premises as the single-family dwelling to which such building is accessory.
- (3) All accessory dwelling units must meet the dimensional standards applicable to the zoning district in which it is located, regardless of whether the building being converted is a pre-existing, non-conforming building.
- (4) One of the dwelling units on a lot containing an accessory dwelling unit must be the principal residence of at least one of the lot owners. Non-individual lot owners, such as partnerships, corporations, trusts, limited liability companies or other entities, shall be eligible to receive a special use permit for an accessory dwelling unit only if an owner of such entity, whose ownership interest in such entity is equal to or greater than all other owners of such entity, or a trust beneficiary, whose beneficiary interest in such trust is equal to or greater than all other beneficiaries, occupies one of the dwelling units on such lot containing an accessory dwelling unit as such entity owner's or trust beneficiary's principal residence. Lot ownership shall be evidenced by the last deed recorded in the Ontario County Clerk's office. Ownership of an entity shall be evidenced by a partnership agreement, corporate stock ledger or other corporate document providing such ownership information, limited liability company operating agreement or other documentation that shows the ownership interests in such entity. Interests of trust beneficiaries shall be evidenced by the trust agreement or by a memorandum of trust executed by the trustees of such trust. Evidence that the dwelling is occupied as the person's principal residence may be established by an affidavit of the record owner,

supported by voting records or such competent evidence as would be sufficient to establish a person's principal residence for purposes of voting.

- (5) DOH approval. The single-family dwelling and all accessory dwelling units shall be in full compliance with the standards of the Ontario County Department of Health. The Code Enforcement office shall require a New York State licensed engineer's report that shows the septic system and well on the lot are able to serve all dwelling units on the lot adequately, and that there will be no impact to adjoining properties. An accessory dwelling unit shall have a separate water service connection either directly from the town, if the lot is connected to town water, or from a private well located on the same lot. Under no circumstances shall an accessory dwelling unit have its water connection come from the single-family dwelling or another accessory dwelling unit on the lot.
- (6) Well. If any of the dwelling units on the lot will have its water supplied by a well on the lot, a water quality test shall be performed by an independent individual or entity, qualified to conduct such tests and submitted to the Building Inspector to determine that the water supply is safe for domestic use. The well test shall include an analysis for coliform and residual chlorine. Should coliform be present, a test for fecal coliform shall be required. In the event that such test determines that the water supply is not safe for domestic use, any procedures necessary to make the supply safe shall be completed and a new, independent test provided prior to the issuance of the Building Permit.
- (7) Building Code. An accessory dwelling unit shall meet all applicable building codes, including the New York State Uniform Fire Prevention and Building Code.
- (8) Parking. An accessory dwelling unit shall have an area available in which to provide adequate off-street parking for the accessory dwelling unit. A minimum of one (1) additional space shall be provided for the accessory dwelling unit, and parking shall be allowed in a location on the lot as required by the Zoning Law §145-24, as amended.
- (9) Accessory dwelling unit size. Accessory dwelling units 400 sq ft or less shall comply with Appendix Q of the NYS Residential Code. Accessory dwelling units between 401 sq ft but no more than 720 square feet gross floor area shall comply with the NYS Residential Code construction.
- (10) Access. Separate direct access to the exterior shall be provided from the accessory dwelling unit. Access between the single-family dwelling and the accessory dwelling unit is permissible provided any doors providing such access must be "lockable" from both sides.
- (11) Lot coverage. The maximum lot coverage for the lot shall not increase by more than ten percent (10%) through alterations or additions of the single-family dwelling or through the conversion of a detached building to accommodate an accessory dwelling unit. The maximum lot coverage shall not otherwise exceed that required for the zoning district within which the parcel is located.

- (12) Bedroom. An accessory dwelling unit shall not contain more than two (2) bedrooms. An efficiency unit (0 bedrooms) with a clearly defined sleeping area but not a fully enclosed bedroom, also, shall be allowed in lieu of providing an enclosed bedroom. No other space shall, in the determination of the Building Inspector, be so configured that it could be used as a third bedroom (e.g., a den, a sewing room, etc.).

D. Application. A special use permit application for an accessory dwelling unit shall be submitted to the building department, along with payment of the fee applicable to file a special use permit application and any other applicable fee as set forth, from time to time, in the "Town of Phelps Fee Schedule", along with the following in order to determine whether the accessory dwelling unit meets the requirements set forth herein:

- (1) A floor plan to scale on the single-family dwelling with the location of the proposed accessory dwelling unit shown thereon. Dimensions shall be provided of the entire single-family dwelling and accessory dwelling unit to determine compliance with the standards set forth herein.
- (2) A site plan, prepared in accordance with Chapter 115, Site Plan Review, of the Code of the Town of Phelps, showing at a minimum, the lot boundaries, all structures located on the lot, the location and dimensions of the proposed accessory dwelling unit(s) and all lot dimensions to enable the Town to verify that all lot dimensions for the applicable zoning district will be met. Parking locations shall also be shown on the survey.
- (3) Documents acceptable to the Code Enforcement Officer, Zoning Board of Appeals and the Planning Board showing, if applicable, the location and size of the existing and/or proposed septic system and well, that the lot is in full compliance with the standards of the Ontario County Department of Health and showing that the water supply is safe for domestic use.
- (4) Proof that one of the dwelling units on the lot that will contain an accessory dwelling unit will be the principal residence of at least one of the lot owners, one of the owners of a non-individual lot owner, as provided in this section, such as partnerships, corporations, limited liability companies or other entities, or a trust beneficiary, as provided in this section. Evidence that the dwelling is occupied as the person's principal residence may be established by an affidavit of the record owner, supported by voting records or such competent evidence as would be sufficient to establish a person's principal residence for purposes of voting, copies of utility bills, tax bills or proof that the owner does not have his or her mail forwarded to a different address.

E. Zoning Board of Appeals review. Upon receipt of a complete application for a special use permit for an accessory dwelling unit meeting all the requirements of this Zoning Law, the Code Enforcement Officer shall refer the application to the Zoning Board of Appeals for review and decision pursuant to this Chapter. The Zoning Board of Appeals

decision shall be subject to compliance with Chapter 115, Site Plan Review, of the Code of the Town of Phelps.

F. Building permits and certificates of occupancy. An accessory dwelling unit shall comply with the provisions of § 60-4 and §60-7 of Chapter 60, Building Code Administration, of the Code of the Town of Phelps, which requires issuance of a Building Permit for construction and a Certificate of Occupancy for occupancy.

G. Ownership verification. At the time of special use permit renewal, if the Zoning Board of Appeals requires the special use permit to be renewed at such time as determined by the Zoning Board of Appeals to be reasonable, the lot owner shall provide proof of continued occupancy as a principal residence as required by this section. Such forms of proof include, but are not limited to, an affidavit by the owner, copies of utility bills, tax bills and proof that the owner does not have his or her mail forwarded to a different address.

H. NYS Building Code. If any of the provisions herein conflict with the New York State Building Code, such Building Code shall control.

Section 4. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 5. This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.),

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2024 of the **Town of Phelps** was duly passed by the Phelps Town Board on July 15, 2024, in accordance with the applicable provisions of law.

~~**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer¹.)**~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, 20__ in accordance with the applicable provisions of law.

~~**3. (Final adoption by referendum.)**~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20__, in accordance with the applicable provisions of law.

~~**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 20__, in accordance with the applicable provisions of law.

¹ Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county- wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or Village, or the supervisor of a Town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2005 of the City of _____ of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20__, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the County of _____, State of New York, having been submitted to the electors at the General Election of November ____, 20__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.



Wendy Sitterly
Clerk of the Town

Date: July 17, 2024

**RESOLUTION AUTHORIZING ADOPTION OF LOCAL LAW NO. 5 OF 2024
A LOCAL LAW AMENDING THE CODE OF THE TOWN OF PHELPS TO ADD
REGULATIONS PERTAINING TO ACCESSORY DWELLING UNITS**

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Phelps for a public hearing to be held by said Town Board on July 15, 2024, at 7 p.m. at the Phelps Town Meeting Hall, 1331 NYS Route 88, Phelps, New York, to hear all interested parties on a proposed Local Law amending the Code of the Town of Phelps to add regulations pertaining to accessory dwelling units; and

WHEREAS, notice of said public hearing was duly advertised in the official newspaper of the Town of Phelps, on June 29, 2024 and all other notices required by law to be given were properly served, posted or given; and

WHEREAS, said public hearing was duly held on July 15, 2024, at 7 p.m. at the Phelps Town Meeting Hall, 1331 NYS Route 88, Phelps, New York, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Proposed Local Law, or any part thereof; and

WHEREAS, pursuant to part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law it has been determined by the Town Board that adoption of said Local Law would not have a significant effect upon the environment and could be processed by other applicable governmental agencies without further regard to SEQR; and

WHEREAS, the Town Board of the Town of Phelps, after due deliberation, finds it in the best interest of the Town of Phelps to adopt said Local Law.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Phelps hereby adopts said Local Law No. 5 of 2024, entitled, "A Local Law Amending the Code of the Town of Phelps to Add Regulations Pertaining to Accessory Dwelling Units", a copy of which is attached hereto and made a part of this resolution, and be it further

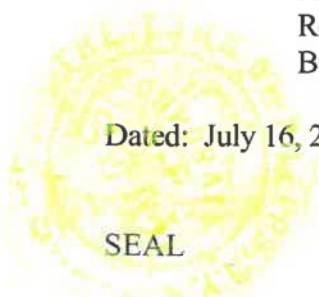
RESOLVED, that the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Phelps, to give due notice of the adoption of said local law to the Secretary of State of New York, to publish an abstract of this local law in the Town's official newspaper and to post a copy of this local law on the Town of Phelps sign board.

I, Amy Sitterley, Town Clerk of the Town of Phelps do hereby certify that the aforementioned resolution was adopted by the Town Board of the Town of Phelps on July 15, 2024, by the following vote:

	<u>Aye</u>	<u>Nay</u>
Bill Wellman	<u>X</u>	---
Kent Ridley	<u>X</u>	---
John Duchesneau	<u>X</u>	---
Ron Allen	<u>X</u>	---
Brent Ford	<u>X</u>	---


Amy Sitterley, Town Clerk

Dated: July 16, 2024



SEAL