

June 2017

# HOME REMEDIES

## Accessory Apartments on Long Island: Lessons Learned

BY ELIZABETH MOORE



**LONG ISLAND  
INDEX**

## A stately line of sycamores

shades the wide lawns and roomy split-level homes of Commack's Ramita Lane. Swimming pools are tucked behind tall white side-yard gates. It's a suburban idyll, with specimen plantings on half-acre lots and not a soul in sight on a sleepy Saturday afternoon.

Guess which three of these houses contain rental apartments? Even with addresses drawn from the town of Huntington's public list, it's impossible to tell.

That side door tucked behind a hedge might be the tenant's entrance—or maybe it's just a side door. The street is so quiet, there's nobody to ask.

Three decades ago, when the town of Huntington began permitting accessory apartments for single-family homes, it was tackling two problems endemic to the Long Island region: the growing number of homeowners having trouble keeping up with their mortgages, and the urgent need for affordable housing.

Ramita Lane is an example of how well these laws can work.

But an uglier future was conjured by 700 livid homeowners who converged at New Hyde Park High School in 2008 to blast North Hempstead officials for adopting an ordinance like Huntington's.

They foresaw strangers coming and going at all hours, loud parties and a surge in crime. Broken sidewalks and front lawns paved over for more cars. Illegal immigrant children swarming into the local schools.

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Traffic. Slumlords. Falling property values. And no place to park.

Why did they think this was coming? Because of what was already happening with all the illegal apartments in the area, they said.

"Make it Flushing! Turn it into devil's kitchen! You're doing it, and you've alienated all of us," said resident Mitchell Friedman that night. "Stay away from us. We're not stupid people."

North Hempstead officials threw out that law within weeks of passing it, and

# What is an ADU? What is a Mother-Daughter?

Many people confuse accessory dwelling units, or ADU's, with two-family homes, but they are distinct housing types serving different purposes.

Where a two-family home generally contains two comparably sized living spaces, a classic accessory apartment is a separate, secondary dwelling unit of much smaller size than the primary home, either in the house itself or in a carriage house or converted garage.

A two-family home may be occupied by the owner and a tenant, or solely by renters. But an ADU permit usually requires the homeowner to continue to live on the property—the better to maintain and preserve the home's single-family character.

While a two-family home typically has equal-sized entrances right out front, the entry to an accessory apartment is intentionally inconspicuous, smaller, and tucked to the side or rear of the home.

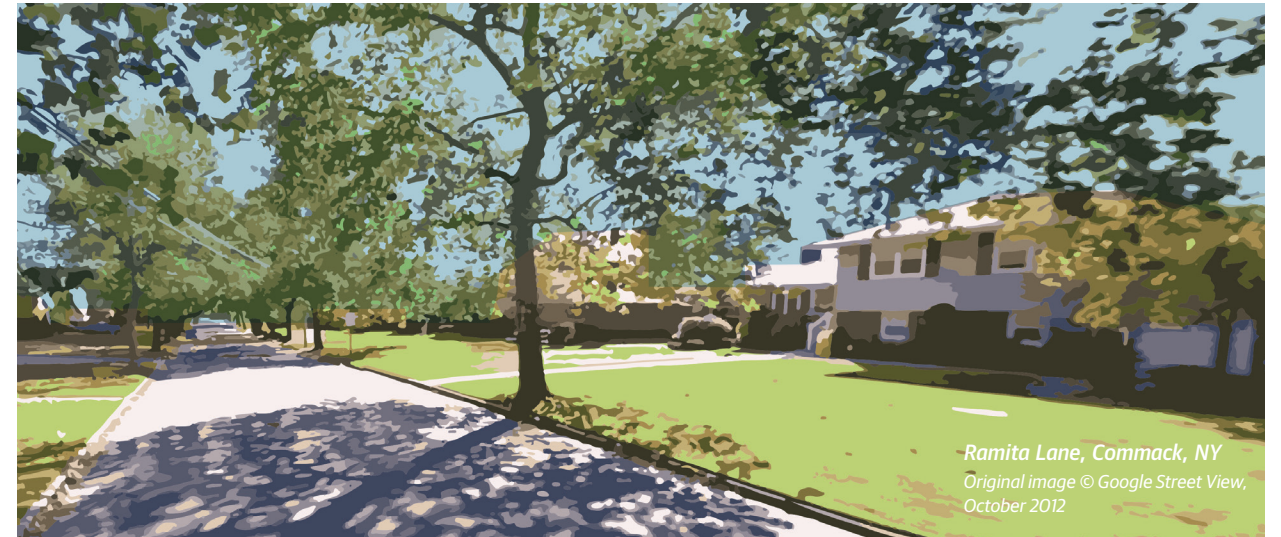
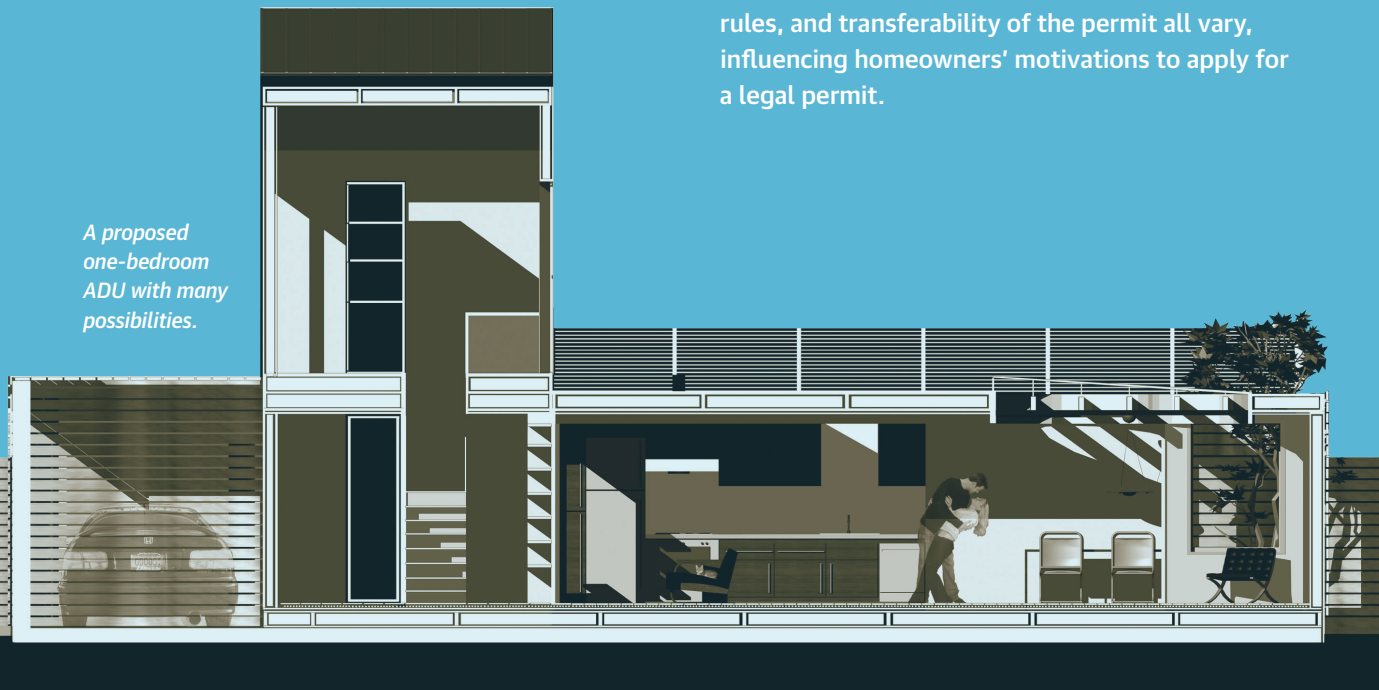
A mother-daughter apartment is essentially an accessory apartment that may only be occupied by a relative.

That said, every Long Island community has its own approach to the size, layout and restrictions on its apartments, in keeping with local history and tastes.

So-called mother-daughter apartments in the village of Island Park, for instance, are not permitted a separate entrance and must have an unobstructed passage between the two dwelling units. In unincorporated Hempstead, mother-daughters may have two front doors, one next to the other, looking somewhat like a two-family home, while in the town of Babylon, people putting two front doors on a single-family home have been fined and forced to remove one of them.

And when it comes to approval policies, some permitting jurisdictions' requirements may be so strict that their "yes" may not look all that different from another town's "no." Some issue initial permits through their building departments, others through special review boards or the zoning board of appeals, with public notice and hearings as if for a variance. Fees, inspection and renewal rules, and transferability of the permit all vary, influencing homeowners' motivations to apply for a legal permit.

*A proposed one-bedroom ADU with many possibilities.*



instead chose a get-tough campaign of escalating enforcement. But for a few, the rage at New Hyde Park was bewildering. The town board had passed the measure unanimously to help its struggling seniors, some of whom had been taking in illegal tenants to make ends meet.

"Part of the job of government is to help people stay in their homes," said former councilman Fred Pollack. "But everybody went crazy."

Almost four decades after some Long Island towns began cautiously allowing accessory apartments in single-family homes, this housing type is broadly accepted in Suffolk County even as it remains controversial in much of Nassau. At the same time, despite any number of crackdowns, amnesties and code changes, both counties continue to contend with rampant illegal apartments whose owners are uninterested in finding ways to be legal. Several jurisdictions have all but resigned themselves to the illegality by assessing extra taxes on presumed scofflaws who refuse to allow inspectors access to their homes. But if accessory apartments haven't turned out to be a cure-all for the region's affordable housing problem, they have still proven their worth, officials say.

"I think we've learned it is extremely necessary to have legal accessory apartments—as an option for housing, but also as an option for the homeowner to be able to maintain his or her quality of life, to be able to pay their bills," said Babylon Supervisor Rich Schaffer, whose town adopted Long Island's first accessory apartment ordinance in 1979. "It comes down to almost a matter of life or death, for some seniors who don't want to leave their home."

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## THE PROBLEM

"America's first suburb has gone from being one of the most affordable places to raise a family to one of the least," noted Long Island's Rental Housing Crisis, a 2013 report cosponsored by the Regional Plan Association, Long Island Community Foundation and Ford Foundation.

The single-family neighborhoods that defined this region's appeal are now home to shrinking families struggling to cover the costs of all those empty bedrooms, even as Long Island's work force faces a shortage of moderately priced rental housing. Two thirds of Long Island renters can't afford a typical two-bedroom apartment, the report found.

## LESSONS LEARNED

# Santa Cruz, California

Not far from the Pacific Ocean, behind a century-old cottage, what must once have been the garage is now a tidy white bungalow, trimmed like the main house in royal blue.

Two doors down, a second story has been added to another garage. This one's got modernist vinyl siding and slider windows that echo those on the main house. And so it goes throughout this stylish neighborhood of picket fences and climbing roses, where every other house seems to have its own Mini-Me in the form of a converted garage or bump-out expansion. The multiple electric meters are a dead giveaway.

Funny thing: None of these extra homes is listed on Santa Cruz's roster of accessory apartments, obtained from the city via a public records request. That list of 422 apartments amounts to just 2 percent of the housing counted in the last Census, and a fraction of what is evident to visitors.

Why aren't more people on the books? Santa Cruz is considered an innovator in actively encouraging accessory apartments. The city badly needs affordable rentals, with enrollment surging at the University of California's campus, Silicon Valley driving up home prices, and Santa Cruz's status as a vacation destination forcing the locals to compete with wealthy weekenders and tourists for housing.

"We see it as a way to provide housing in a relatively quick and inexpensive manner, that doesn't have a lot of impact on infrastructure—just a way to provide good safe housing," said Alex Khoury, the city's acting planning director.

The city allows homeowners to build apartments as of right. It even issued a handy how-to pamphlet, with an architect's suggested apartment designs keyed to Santa Cruz building types.

But legalizing older units has been a challenge, because so many of the homes were not built to code, or before setback and parking requirements were instituted.

Pressuring homeowners with the threat of harsh enforcement is simply not an option. "We don't want to lose the units," Khoury said. "The goal is to make them legal and safe."

Santa Cruz has steadily loosened its zoning restrictions and trimmed fees, but not by nearly enough, planners learned.

"The other thing people hesitate about is—they're just cheap, and they enjoy getting the rent from these things but they don't like paying the building permit fees," Khoury said.

Those fees, with building permit, water and sewer hookups, ran to some \$12,000—before building costs were factored in. State law was just changed to eliminate some of those fees.

The city's flexibility only goes so far. It locked horns with some apartment owners last fall when it moved to bar them from short-term rentals via Airbnb and other online services.

"With the cost of land and housing, we're just afraid speculators will come in and buy the single-family homes to add ADU's, and there won't be any single-family homes left—we're already at 55 percent rentals," Khoury said.

But Erin Smith, a new apartment owner, told the Santa Cruz Sentinel last fall that she had abandoned plans for long-term rentals after the cost to build and permit her unit reached \$250,000.

"They're not really affordable to build, so it doesn't necessarily make sense that they should only be for affordable housing," Smith said.



Santa Cruz, CA

So it was little wonder that single-family homeowners responded to this demand for rentals by installing an estimated 90,000 illegal apartments by the mid-1980s, according to the Long Island Regional Planning Board.

The planning board's Lee Koppelman saw in this underground marketplace a solution to the region's housing woes, and in 1989 issued a report calling on local governments to "face the issue" and legalize the apartments, regulating them so that they "become a credit to the community."

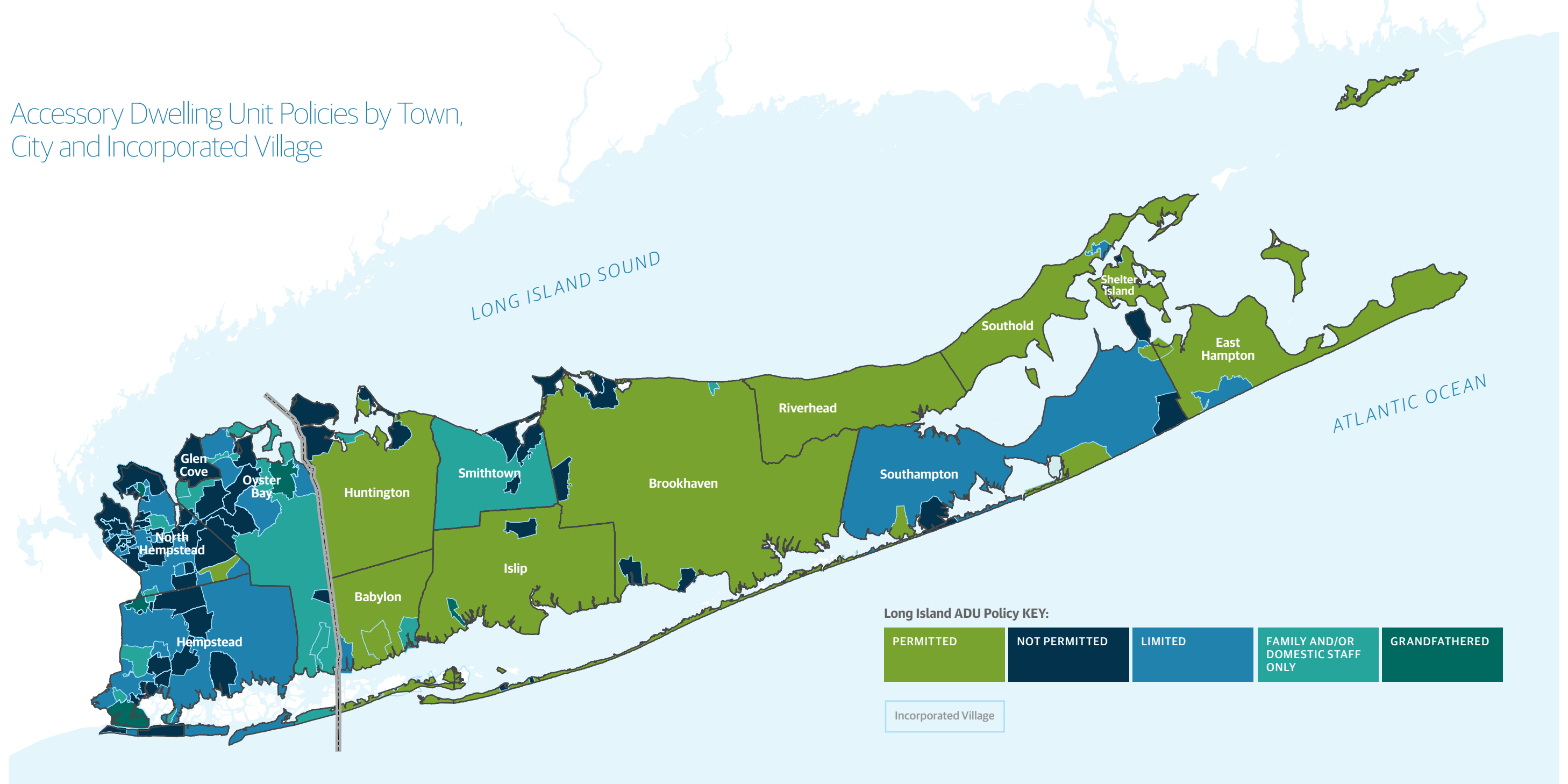
Nationally, accessory dwelling units, or ADU's, have become an urban planning solution prized in high-cost regions where workforce housing is scarce and land is at a premium: among them coastal California, the Pacific Northwest, and Washington D.C.

ADU's don't require large infusions of capital, new roads, new sewers or expansion of the electrical grid. Instead, existing neighborhoods absorb that rental-seeking population like a sponge, while stabilizing finances for tax-strapped homeowners. ADU's also provide affordable housing that is blended throughout the community rather than clustered in one identifiable neighborhood on the wrong side of the tracks. And having a resident homeowner usually means the ADU will be kept up better than typical rental homes.

"How do you add more housing to places that are already built out?" asks Chris Jones of the Regional Plan Association. "If you look at just the affordability question, both from someone looking to find a rent that they can afford and a homeowner trying to keep up mortgage and property tax payments, all those things point to ADU's as a potential solution."

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## Accessory Dwelling Unit Policies by Town, City and Incorporated Village



If 10 percent of Long Island's single-family homes added an accessory apartment, "that would take care of a huge part of the region's housing shortage," Jones said.

### THE RESPONSE

Actually, they are already doing so, officials say—only, without involving the government.

Adopting the first accessory apartment ordinance in 1979, Babylon estimated that between 10 and 20 percent of town homeowners had installed rental apartments on their homes to help make ends meet.

An orderly permit process would keep them in town, while assuring their homes were safe and attractive, officials hoped.

Babylon decided to insist on owner occupancy after studying residents' complaints related to two-family houses: Absentee landlords owned just 10 percent of the town's two-families, but their properties sparked 50 percent of all complaints about them.

By the time of Lee Koppelman's 1989 advice, some Suffolk officials already were moving to follow Babylon's example. Others were skeptical.

"It won't do away with illegals, because the people that own the property do not want to pay the permit fee, do not want to pay the increased taxes, and do not want to report the extra income to the Internal Revenue Service," Smithtown Supervisor Patrick Vecchio told *Newsday* in 1989. Still supervisor 28 years later, Vecchio says he believes those dynamics are the same today.

Today, nine of Suffolk's 10 towns have established procedures to legalize or authorize accessory apartments for non-relatives. In Nassau only one has: the town of Hempstead allows homeowners 62 and older

to apply for "senior residence" accessory apartment permits. Oyster Bay, Smithtown and North Hempstead only permit mother-daughter apartments, or (in Oyster Bay) apartments for domestic servants.

Of 97 Long Island villages with zoning powers, seven issue permits for accessory apartments, while another four allow continuation of apartments that predated their codes. Another 24 permit apartments only in limited circumstances. But 62 do not allow them. [See Appendix for listing by town, city and incorporated village.]

An intensive 2016 study of by Hofstra University's National Center for Suburban Studies estimated that between 14,500 and 16,000 accessory apartments have been legalized to date by Long Island municipalities.

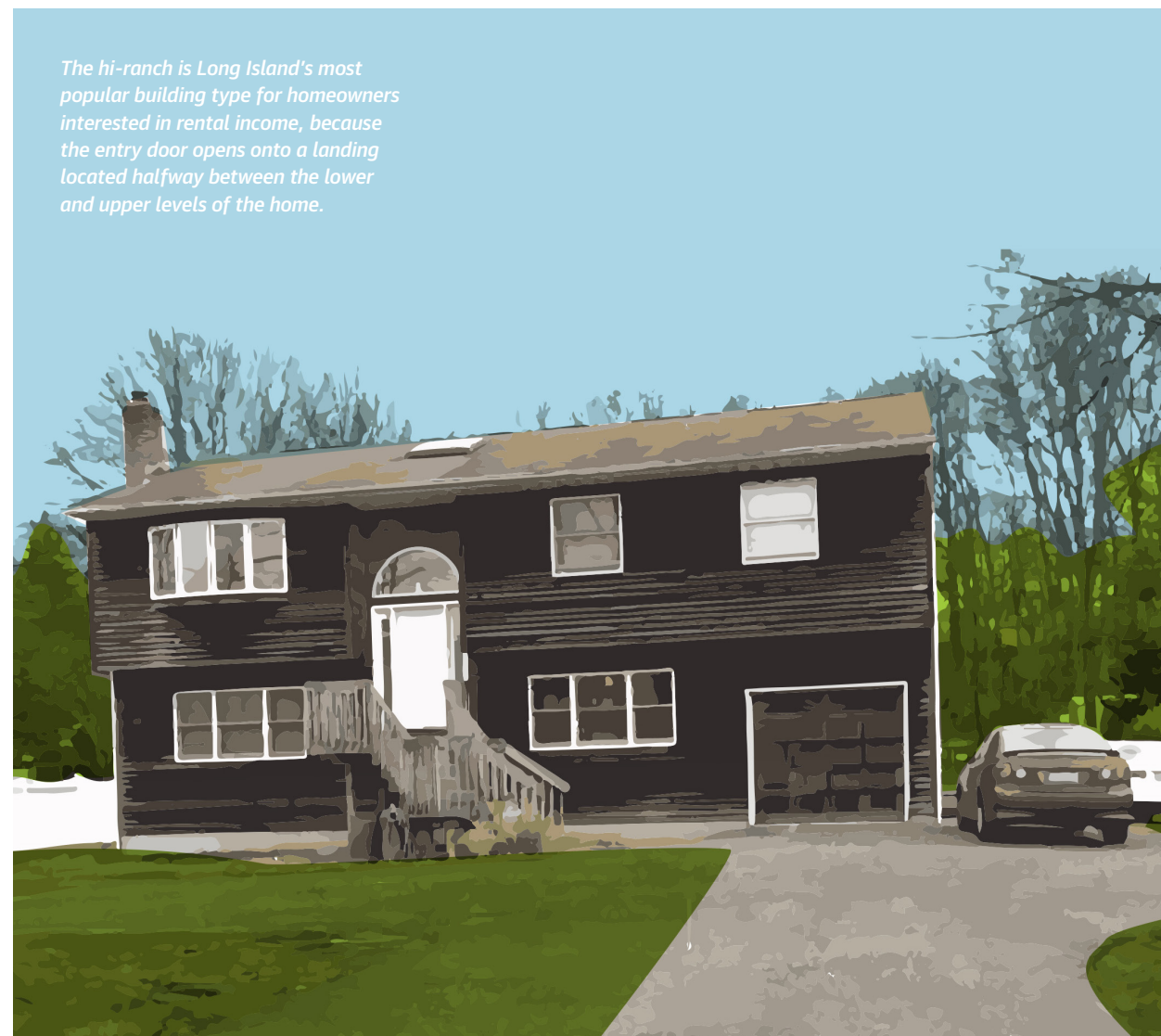
That is still a fraction of what local officials still estimate as some 90,000 to 100,000 illegal rentals Island-wide, which seems to bear out Vecchio's 1989 prediction. And as in North Hempstead, the negative impacts of some illegal apartments have turned taxpayers in most villages sour on the idea of legalizing any of them.

Nevertheless, permitted apartments are widely considered to have proven their worth as the most affordable safe and legal type of housing in the region, one that blends well into single-family neighborhoods, generates few complaints and is increasingly well accepted by residents.

"Last week a gentleman came in to tell me he was absolutely 1,000 percent against (a neighbor) applying for an accessory apartment because it would affect his home value," Huntington Public Safety Director Joseph Rose said. "I assured him it wouldn't affect his home value. I asked him, 'How many are there in your neighborhood?' He said, 'We have no accessory apartments in my neighborhood.' I looked it up. We had some he never knew existed. He was shocked. ...One was four houses away from him, and he'd lived here 15 years.

"He's okay with them now."

But if the market for accessory apartments is so strong that they practically rent themselves, regulating them can be one of the more politically fraught and legally challenging jobs of government. Assuring that they comply with the law pits the demands of public



*The hi-ranch is Long Island's most popular building type for homeowners interested in rental income, because the entry door opens onto a landing located halfway between the lower and upper levels of the home.*

safety and neighborhood peace against the privacy and due-process rights of homeowners.

After all, an accessory apartment in a single-family home is like jumbo shrimp—a contradiction in terms. That leads to legal problems. Single-family zoning has been protected by Supreme Court precedent ever since the landmark 1974 case of *Village of Belle Terre v. Boraas*, which enshrined the role of laws protecting "...a quiet place where yards are wide, people few, and motor vehicles restricted."

Still, if neat solutions are hard to find, officials are learning to manage with messy ones, such as imposing higher taxes on suspected illegal apartments, while easing regulations on the legal ones.

### WESTERN SUFFOLK

"It's not a panacea, but it is a useful tool," is how Islip's former Planning Director Eugene Murphy sums up the value of the town's accessory apartment law.

Murphy led the crafting of Islip's 1992 ordinance, basing it on Babylon's law and motivated by what he called the "great mismatch" between housing supply and demand: Three quarters of Islip's homes contained three or more bedrooms, but most households were made up of single people, widows, divorcees or empty nesters. Mother-daughter apartments for relatives had been legal since the 1960s, but increasingly, people wanted to rent to non-relatives.

That was obvious from a burgeoning concentration of unsanctioned apartments in Brentwood, which had a large stock of hi-ranch style homes.

The hi-ranch is Long Island's most popular building type for homeowners interested in rental income, legal or otherwise. That is because the entry door opens onto a landing located halfway between the lower and upper levels of the home. It often has its garage and family room on the ground level, with a living room, bedrooms and kitchen above.

That central stair makes it easy to carve out an accessory apartment above or below that is served from that same entryway, and the plumbing drops easily from top to bottom floor. There's no need to raise the roof or build an addition, and there may be little to alert neighbors or town inspectors that the house is now accommodating two families—except, of course, for those extra cars parked out front.

By the early 1990s, Islip estimated it had about 8,000 illegal apartments hiding among its 100,000 single-family houses. Because it was impractical to seek search warrants to inspect every one of these homes,

the town had begun adding the suspected apartments to the homes' assessments, based on what they could see from the street and in available records. That would allow the town to collect at least some additional tax revenue, including a garbage surcharge, to cover the added costs.

"We'd say (to homeowners), if you don't have one, grieve us! It was very rarely grieved," Murphy recalled. (Babylon, Huntington and Brookhaven have adopted the same approach.)

Just as in North Hempstead, Islip's town board thought residents would be happy to see an accessory apartment ordinance that would bring some order to the situation, but instead met with intense resistance. Residents feared that an onslaught of apartments would degrade the quality of neighborhood life with too many cars and people, and too many additional school children.

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So Islip started gingerly, with a non-binding referendum followed by a small pilot project in a designated area. It put a strict upper limit on the size of the apartments, and required applicants to notify their neighbors and appear at a public hearing, where any absentee landlord would be quickly exposed.

Once it became clear there was not going to be any stampede of applications, the town began to ease up on some of the requirements to encourage greater participation. But a quarter century into the program, even Murphy was surprised to learn how few have been persuaded to sign up: The town's assessment roll tallies 642 accessory apartments, as well as 418 mother-daughter units, according to Assessor Anne Danziger.

But the same Islip tax roll counts 3,623 presumed illegal apartments.

Why don't more people sign up and get legal? Murphy has heard the same reasons as Smithtown's Vecchio: they don't want the IRS to know.

Inspections are another reason. Scofflaw profiteers, who pack unsafe numbers of tenants into single-family homes, are making far more money than homeowners who play by the rules.

And even otherwise law-abiding folks who are just trying to cover their mortgage payments are not thrilled by the prospect of a mandatory home inspection. Maybe two owners ago, someone built a garage without a permit, or the pool is not to code, or who knows? Maybe the fence is two inches too short.

"There's a generalized sense that you don't want the government on your property," said one veteran of the process.

Helping Huntington taxpayers stay in their homes is the point of the program, town spokesman A.J. Carter said.

That same concern prompted the town of Huntington to revise its own inspection program. For years, the town inspected the entire house, scouring it for anything not up to code. Recently, it softened its approach, sticking to the safety of the apartments themselves.

"It doesn't feel as intrusive now," said Pam Robinson, an assistant to the Suffolk county parks commissioner who has had tenants in her Huntington home for about 20 years. She long ago got used to taking off a half day each year to meet the inspector, but these days, "the concern really seems to be focused on safety: exits, railings, window egress and smoke detectors. They are really not obnoxious..."

"...It helped me pay the mortgage."

That—helping Huntington taxpayers stay in their homes—was the whole point of the program, town spokesman A.J. Carter emphasized. Affordable housing is strictly secondary. At last count, the town had 1,616 legal accessory apartments sprinkled throughout its hamlets, from Cold Spring Harbor to Melville and Dix Hills to Northport. The town has tinkered with the law several times since its original 1988 passage to regulate parking and make it easier for seniors to apply. To

assuage concerns that it might lead to slum areas, permits are refused if more than 10 percent of the homes within a half-mile radius already have apartments.

Another issue that reportedly causes some homeowners to avoid legalizing their units: fears that by becoming part of a publicly listed rental, they will be vulnerable to challenges for fair-housing reasons and might be forced to accept tenants with whom they are uncomfortable.

They needn't worry. Owner-occupied accessory apartments are one of the very few forms of housing that is generally exempt from federal, state, county and local laws against discrimination, although public advertising or brokers who list the apartments may be subject to those laws.

Robinson, who hadn't planned on operating a rental but found the apartment in her home when she bought it, has seen and even unknowingly rented illegal apartments in Huntington, and didn't hesitate to apply for a permit instead. "I didn't want the hassle of trying to sneak around. I would rather be above board," she said. She quickly found a steady stream of reliable tenants at a local educational institution, and has adjusted as the town periodically tightens and relaxes regulations.

"My only beef is that sometimes the town tries to address problems with illegal apartments through legal ones," she said. Recently the town increased its apartment inspections from every other year to annually, because of complaints about illegal apartments, she said.

But overall, "it's a win-win for everybody," Robinson said.

#### THE EAST END

Hamptons people never tire of grumbling about the "trade parade"—the snarl of commuter traffic along Montauk Highway from the people who trim the privet hedges, build the houses and clean the pools. They used to be locals, who had a short drive to work from neighborhoods north of the highway. But a small ranch house that might have sold for \$7,000 in 1970 goes for \$1.5 million today, notes Southampton Village Mayor Mark Epley.

These days much of the hardest work is done by the immigrant workforce from Mexico and elsewhere, sometimes undocumented, who are in high demand even if their presence sparks controversy. Some ride the bus in from Riverhead, while others cram themselves into converted strip motels, single-family rentals in Hampton Bays or shabby side streets, where scalded front lawns are a tipoff to all the cars parked on them overnight.

#### LESSONS LEARNED

## Durango, Colorado

This scenic old-West city has become a booming college town, tourist destination and second-home mecca, but the picturesque surrounding mountains offer no room for sprawl. So an enthusiastic city council proposed permitting accessory apartments. Realtors were interested in clearing up uncertainty. Second-home owners liked the idea of a tenant to keep an eye on their home while they were away. Students liked the idea of an affordable apartment near campus.

Then came the backlash: a staff rebellion, "Save Our Historic District!" pickets and a letter-writing campaign by angry residents. They thought the city was moving too fast and hadn't done enough to crack down on illegal apartments, and they feared that the new law would only open the floodgates to more traffic, parking, noise and crowding problems.

It took more than 10 years, 13 public hearings, and countless re-draftings to win this community's support for its 2014 ordinance. Key elements: The apartments were restricted to just two neighborhoods in the city. They had strict size limits, design standards, and an owner-occupancy requirement that discouraged large households and deterred speculators and second-homeowners.

To woo illegal apartments into the system, the city offered a temporary discount on the registration fees as well as an optional payment plan and a

user-friendly online application process that allowed homeowners to register their units without the need to visit City Hall. And instead of sending inspectors to examine the apartments, something that unnerves many applicants, Durango allows them to submit an "age and safety affidavit" attesting that the apartments meet all applicable codes for life safety.

More than 260 existing apartments were legalized, but only nine new ones have been built so far, says Durango planning manager Scott Shine. Now the city is turning its attention to enforcement action on the 100 to 200 illegal apartments—and looking at ways to encourage homeowners to build more new legal ones. Already some candidates for city council are advocating expanding the program to new neighborhoods.

The city's primary goal, Shine said, was "making a clear path for legitimization of the existing units. We didn't see a big benefit in making that difficult. They are already there and part of the neighborhood—how do we get them on the books?"

"Building trust was a big thing. People were very skeptical of the city's intentions. We just tried to say over and over, we just want to know where these are. It's a housing alternative in our community. We're not going to be shutting them down."



And during peak summer weeks there is competition for party houses, summer shares and weekend Airbnbs.

The housing shortage is so dire that even when inspectors raid homes that have been chopped up into illegal apartments, they take pains to avoid evicting the illegal tenants, instead working with the courts to force correction of the hazardous conditions, Southampton's Assistant Town Attorney Richard Harris said.

At one house fire, volunteer firefighters arrived to see 15 people streaming out clutching possessions. Inside, the basement had been partitioned off, with a tangle of extension cords running every which way.

The danger faced by both tenants and volunteer firefighters that night galvanized this Republican mayor's support for legal accessory apartments—but it can still be a tough sell.

"You get the neighbors who say they don't want affordable housing because they all think in terms of Section 8 housing, which is social services," said Epley, who must patiently explain that in the Hamptons, bank tellers, school teachers and police dispatchers are being priced out of places to live.

East End communities have tried to tailor their apartment ordinances to support their locals, with limited success.

Southampton Village has adopted an accessory apartment overlay district, allowing up to 20 two-year permits for tenants who can prove they are residents or employees in the village. So far there have been no takers.

Westhampton Beach has approved accessory apartments for fire and EMS workers, graduates of Southampton High School, local employees or those of low to moderate income. Two have been filled. Sag Harbor adopted an ordinance with similar preferences and a loan incentive program. They set a limit of 50 ADU's permitted. So far four have been granted.

East Hampton allows accessory apartments only by special permit for homes built before 1984, with safeguards to assure they are going to tenants of moderate income. Sagaponack's only accessory homes are on-site farm-worker housing.

Southampton Town allows accessory apartments, but only on lots of more than ¾ acre. Supervisor Jay Schneiderman says if those homeowners seek permits, it is likely so they can keep their own employees on site, something he frowns on as too much like a "plantation" system.

Schneiderman instead would like to provide permits to truly moderate-income homeowners, but with tight



North New Hyde Park, NY  
Original image of Bryant Avenue,  
New Hyde Park, NY © Google  
Street View, August 2016

controls. So he announced he is working to create a special town program that will partner with lenders and contractors to build apartments for approved seniors, and then send them income-qualified, vetted tenants.

"If we could create 25 affordable apartments in the next year, that'll be more affordable rental apartments than in the last 20."

That plan remains in the conceptual stage as yet.

### NASSAU COUNTY

Three times as densely populated as Suffolk and with an abundant supply of illegal apartments, Nassau would seem to be a good fit for accessory apartment programs.

So why did the idea spark such explosive reaction in North Hempstead?

On the whole, Nassau County's officials have warmed to the concept of affordable housing lately—but in the form of transit-oriented development, not apartments in single-family homes.

"Right on the railroad, very close to the railroad, that's the great availability," said Warren Tackenberg, a former New Hyde Park mayor who runs the Nassau County Village Officials Association. He pointed to Mineola and Westbury as success stories. "In one central place you can get a great number of apartments, as opposed to—you need a certain footprint for a single-family residence."

Indeed, the culture of the Gold Coast dies hard. In the more baronial precincts of the North Shore, local codes have long provided for apartments or cottages tucked away on estates in Centre Island, Cove Neck, Laurel Hollow, Matinecock, Muttontown, or Oyster Bay Cove—but these are strictly for the live-in maid, gardener or chauffeur, or maybe an elderly parent or late-blooming child. Some villages, such as Lattingtown and Laurel Hollow, also allow them if the property is already large enough to accommodate two single-family homes, within a zoning code already calibrated to protect rural density.

Distaste for the concept of a paying tenant is equally palpable among the merely very affluent, in subdivisions modeled on the great estates.

"We have no street parking," pointed out Michael Koblenz, mayor of East Hills, which recently caught one homeowner in the act of converting a garage into an apartment. "Generally, we don't experience a lot of that," he said.

But immigration has brought bewildering cultural changes to the neighborhoods along the Queens line: In the space of just ten years, large swaths of western Nassau have been transformed from almost all-white to majority Asian, according to the Census—in particular the area of North New Hyde Park that led the charge against the accessory apartment ordinance. In neighborhoods where it's not unheard of for a homeowner to retire in the home he was born in, single-family zoning is seen by many as a last bulwark.

"The communities here are so much tighter—literally, the proximity house to house—that everyone can



## LEGAL ISSUES

# What is a 'single family,' anyway?

It has been a long time since Ward and June Cleaver and their two boys could be considered a typical American household.

And while the right of local governments to enforce single-family zoning was upheld by the U.S. Supreme Court 1974 decision in *Village of Belle Terre v. Boraas*, there has been a continuing stream of litigation ever since about the meaning of the word "family."

In the *Boraas* case, the court upheld the right of the village of Belle Terre to bar a group of Stony Brook University students from sharing a single-family house. But the courts have steadily expanded the definition of a family for zoning purposes to include nontraditional and foster families, group homes, and even, in the 1984 state case of *Baer v. Town of Brookhaven*, a group of five elderly women who kept house together.

In light of those decisions, Westbury Mayor Peter Cavallaro says local governments are now on shaky legal ground with any language that limits accessory apartments to blood relatives. His village has stricken any language invoking family ties from its code.

The state has issued a guidance memo that defines a "family" for zoning purposes as a permanent and stable group that shares the entire house,

cooks together and shares expenses. But Hofstra University law professor Ashira Ostrow believes that formula creates some new questions.

"I think we've actually identified a pretty interesting and unsettled area of law," she said. "Within a single dwelling unit, it seems to me that the definition of family has to include a non-traditional family. ...What is unclear is how that would apply to a single-family home that has two dwelling units."

For some North Hempstead homeowners who fought the town's accessory apartment ordinance, these are not academic distinctions. It has been common in recent years on the Queens border for distant relatives to team up and pool their earning power to buy a house, and then move into separate floors. The impact on their neighbors has been palpable.

"How far does the family extend?" asked Marianna Wohlgemuth, a New Hyde Park resident who helped organize the civic opposition in 2008. "Does it mean your brother, sisters, uncle twice removed?"

"We have a lot of McMansions being built, and one home in particular has five entrances. Now, why does a single-family home need five entrances?"

hear each other's conversations, just about," said North Hempstead Building Commissioner John Niewender, a former New Hyde Park fire commissioner. "They don't want somebody they don't know in their block in their neighborhood."

That anxiety aroused a spirit of revolt that proved to be one of the early stirrings of the Tea Party movement on Long Island: Some of that movement's future leaders played a key role in organizing the angry residents who packed New Hyde Park's high school auditorium in August 2008, after the North Hempstead town board removed the requirement that tenants in mother-daughter apartments needed to be related to the owners.

North Hempstead's rule change was relatively conservative, requiring permission from the zoning board of appeals for apartments that could be no larger than 900 square feet, have a maximum of three tenants, and must share a common entrance and utilities with the owner, who must continue to reside in the home.

Residents voiced the opinion that government generally was not to be trusted, and that the town had tried to sneak these new rules into law to serve cronies in the construction industry.

"I'm personally disgusted and I cannot believe that you had the effrontery and the unmitigated gall to think that an entire township would allow this law to pass," said Ann Palmeri of New Hyde Park as the supervisor and town board listened, mute. "What do you think we are, a bunch of morons?"

"I *am* a NIMBY!" proclaimed Peg Fumante, a long-time school board member and civic activist, who passed away in 2011. "I believe I have a right to be a NIMBY. I pay taxes on that backyard, and I take care of that backyard, and I will invite into that backyard whomever I want."

Others castigated the town for its unresponsiveness to housing complaints. David DeSanto, a board member at the New Hyde Park School District, said he had identified 37 houses in that district that had been illegally converted to two- and three-family homes, but had been unable to get the town to act.

Within weeks of that meeting the town abandoned efforts to encourage accessory apartments, instead focusing funds and effort on a steadily intensifying campaign against illegal occupancy.

In 2013, says Planning Director Michael Levine, the town issued 235 appearance tickets or notices of violation against illegal apartments; last year it issued 1,031. Overall, the town says it has taken action on 2,542 housing related complaints from residents since that meeting—most of them for illegal apartments.

So where Suffolk towns responded to the overwhelming tide of illegal apartments by seeking ways to legalize them, North Hempstead has chosen to stand firm against them.

"Very few of those who were cited for illegal two-family got to keep them two-family," said Niewender. And of those homeowners who couldn't, most were also not able to keep their tenants by making adjustments to legalize the layout of the home, he said.

"A lot move on," Niewender said.

"Sure, my inspectors hear from them—everybody has a hardship. We have to look at it as one, a life-safety issue, and two, a self-created hardship. I don't mean to be insensitive, but you have control over your ways and means. If

Residents voiced the opinion that government was not to be trusted, and that the town had tried to sneak these new rules in ... to serve cronies in the construction industry.

you are in a position where you have to put someone in your house illegally, that's not the best choice."

The residents who led the uprising in New Hyde Park generally like what they see.

"We have been inundated by illegal rentals," recalls Marianna Wohlgemuth, a meeting organizer. "It's better now. ...The town is starting to enforce the code."

The dynamics are a little different in Hempstead. In 1992, as accessory apartment laws were passing throughout Suffolk, the town of Hempstead adopted its own such measure—a "senior residence" law that allowed the apartments if the homeowner or spouse was 62 or older. That measure was adopted with little controversy, possibly because of the way it was labelled, says former Hempstead Supervisor Richard Guardino, executive director of the Long Island Regional Planning Council.

"The way we presented it was as a way for seniors to remain in the town," as well as providing affordable starter homes for younger people, Guardino said. That held appeal to an aging population, many of whom struggle with high taxes and mortgage costs but want to stay put so they can be near their children and grandchildren.

As elsewhere, the most sensitive aspect of the apartment policy would turn out to be the off-street parking requirement.

"The point at which people get irritated is when the parking space in front of their house is taken," Guardino said.

Today, Hempstead officials say 848 such permits have been granted, along with 1,344 mother-daughter permits.

But the concept so important in Suffolk's codes, that legal accessory apartments must be disguised so as to preserve the single-family character of the neighborhood, does not seem to have gained much traction here. In the town of Babylon, a house with two front doors would get a visit from code enforcement officers and likely be required to remove one of them.

## ADUs have not escaped the challenging race and class politics of affordable housing.

Nor is there as much consistency in housing vocabulary. Hempstead's website interchangeably refers to a single-family home with an accessory apartment, or "senior residence" as a "two-family home."

All three Nassau towns have been toughening their enforcement. Hempstead among others, adopted "rebuttable presumptions" language that allowed inspectors to obtain warrants and issue summonses for illegal apartments even if they weren't allowed inside, if they found enough telltale signs such as multiple utility meters, doorbells, entrances or mailboxes.

Two years ago, North Hempstead adopted a similar rule, with stiff penalties of \$2,500 rising to as much as \$30,000 and 15 days in jail for repeat offenders.

"Safety has come to the forefront," Niewender said. "We like to be proactive."

### CONCLUSION: "THE THIRD RAIL OF POLITICS"

Elsewhere on the Island, there has been some small movement toward a more liberal approach to accessory apartments in the past few years. In 2009, Hempstead broadened rules on mother-daughter apartments to include siblings as well. As of 2012, Oyster Bay's "parent-child" apartments allow step-family members, in-laws and grandparents and grandchildren. Smithtown relaxed its rules to allow separate entrances

and below-grade apartments. Huntington has shifted its enforcement efforts to rentals owned by absentee landlords, said Councilwoman Tracey Edwards.

Still, as they probed local attitudes and policies toward accessory apartments two years ago, Hofstra University's research team were repeatedly warned that they were unlikely to get much cooperation because of the controversial nature of the subject.

Indeed, the limited survey of local officials that Hofstra was able to do revealed that although some saw accessory apartments as making a positive contribution, they overwhelmingly believed residents favored keeping the status quo. They tended to think residents would object to accessory apartments as a form of affordable housing.

"This suggests that ADUs have not escaped the challenging race and class politics of affordable housing generally, even among local officials," the researchers concluded.

North Hempstead's disappointed former councilman Pollack agrees.

"In Nassau County, accessory housing is like the third rail of politics," he said.

Pollack had planned to try again with a seniors-only apartment ordinance like Hempstead's, but was defeated at the polls two months later. Establishing a seniors-only accessory apartment program would probably protect the New Hyde Park neighborhoods from the very things they fear, Pollack believes.

"The truth of the matter is that most of the seniors didn't want to rent to people with school-aged kids—they'd want to rent to an adult who was quiet. And by the way, I guarantee you if you went door to door in those areas you'd find an awful lot of seniors and others who are renting out their homes right now—and they pay nothing extra in taxes."

North Hempstead these days is focusing resources on a marquee program it calls "Project Independence," an array of supportive services aimed at helping the town's seniors remain in their homes. But Pollack sees little chance that a legal accessory apartment program will be one of those supports any time soon.

"The first thing we need is people who are willing to come to meetings and say we want this and support this," he said. Otherwise, "I don't think anybody is going to be willing to go there."

Current North Hempstead town board members did not respond to requests for comment.

### IF YOU CAN'T BEAT 'EM, TAX 'EM

Meanwhile, in Suffolk County, officials are adjusting to the reality that despite their best efforts and decades of tinkering with incentives and penalties, there may still

be more illegal accessory apartments out there than legal ones.

"It didn't achieve the results we had hoped for," says Islip's Murphy of his town's program. "So, fiscally, we make our peace with the idea by assessing (them) the same way."

As in Islip, Huntington, Brookhaven and Babylon, among others, have taken homes with "presumptive" apartments out of the regular single-family tax bracket, assigning them higher valuation and a 50 percent higher garbage tax. Babylon has 4,056 homes with legal apartments and 1,394 with illegal ones on its roll. Huntington has 2,243 legal properties and 160 suspected illegal ones. Brookhaven's building department counts 2,570 permits for accessory apartments—but its tax roll includes a combined total of 6,500 legal, mother-daughter and "presumptive" illegal apartments, says Assessor Ronald Devine.

Those illegal apartments are often still meeting the important goals of stabilizing homeownership and providing affordable housing, Murphy said.

"While the ideal is always to legalize them, evidence shows that in many cases the effect of illegal apartments on a community is benign," he said.

"Where it is not benign, there is a mechanism to aggressively address complaints. That is the yin and the yang of it."

So it goes throughout the Island, where illegal apartments remain about as hard to find as whiskey was during Prohibition.

Jeannie DeMaio, grants administrator at the Long Island Community Foundation, says she found one through family friends after the breakup of her first marriage left her in need of a home in 1990. It took up the second floor of a "very nice" Dutch colonial in South Wantagh, reached by a separate entrance and stairway in the back of the house. The owners lived downstairs.

DeMaio, then a secretary for the Long Island Lighting Company, was a quiet tenant who kept to herself but waved to neighbors as she came and went from work.

"I think quite a lot of people in the neighborhood had apartments, because I'd see other people like me coming and going up the back steps," she said. "People were having a hard time paying their taxes."

Why would an otherwise law-abiding person rent an illegal apartment?

"It gave me a safe place to live at a reasonable rent," says DeMaio, who has since remarried. "I had a good job, and I still couldn't swing apartment-building rent. ...Today, if I had to go out and find a place to live, I still couldn't afford one. I look at what they consider affordable rent today, and I laugh."

Even Marianna Wohlgenuth, the anti-accessory apartment organizer in New Hyde Park, admits she sometimes turns a blind eye to illegal units.

"I saw an ad in Facebook on someone's page, 'I'm looking for a new roommate,' so they own the house and they rent out rooms to people," she said.

"Talk about blatant! But I'm guilty of that as well. I look the other way unless it becomes outrageous, a nuisance, where people are complaining. We all have to live."

### A COMPLAINT-DRIVEN SYSTEM

In the suburbs, privacy and tranquility are the values most prized by homeowners. Preserving that tranquility is generally the key to survival for those in local government, and tends to inform the way enforcement operates.

"The town's building department, like most others, is complaint driven," said Hempstead spokesman Michael Deery, echoing the words of officials in both counties.

That is why some illegal apartments may be an open secret for generations in communities that officially forbid them, as long as they draw no complaints. Or why legal ones may suffer an undeserved bad reputation, because of complaints caused by other types of rentals. On Long Island, whether and how local officials decide to permit accessory apartments has sometimes had less to do with the need for affordable housing or to stabilize homeownership, than on what policy would result in the fewest complaints.

In North Hempstead, officials investigated several resident complaints about illegal multifamily housing, Niewender said, only to discover the homes in question were occupied by extended immigrant families that included grandparents, aunts, uncles and cousins under one roof—all perfectly legal.

"People are fearful of affordable housing because they don't think it includes them, and sadly, some of that stems from implicit bias," said Sol Marie Alfonso-Jones, senior program officer at the Long Island Community Foundation.

Jones thinks more of a spotlight should fall on the illegal apartments hidden away in basements and extra bedrooms throughout predominantly white areas of the Island. They are serving urgent needs for both renters and homeowners, she says, but they are also allowing officials to duck responsibility for addressing those needs.

"Once ... we start seeing what affordable housing really looks like, we're not going to always be able to hide behind (the fear of) 'those people,' " Jones said.

"'Those people' means *you*." ■

# Appendix:

## Long Island ADU Policy KEY:

**PERMITTED**

**NOT PERMITTED**

**LIMITED**

**FAMILY AND/OR  
DOMESTIC STAFF  
ONLY**

**GRANDFATHERED**

### SUFFOLK TOWNS

ADU POLICY

**BABYLON TOWN**  
UNINCORPORATED  
PERMITTED

Accessory apartment permits may be obtained from the Accessory Apartment Review Board after a public hearing. Permit may be revoked if there is excessive noise or disruptive activity. Owner occupancy required; home must maintain only one front door; minimum of 350 square feet; owner must demonstrate sufficient parking.

**BROOKHAVEN TOWN**  
UNINCORPORATED  
PERMITTED

Provisional permit obtained by application to the chief building inspector; renewals from the Accessory Apartment Review Board. Standard apartment size 350 to 650 square feet and no more than 40 percent of home's living area. No more than 5 percent of homes within a half-mile radius may have accessory apartments. No registered sex offenders allowed.

**EAST HAMPTON TOWN**  
UNINCORPORATED  
PERMITTED

In homes built 1984 and older.

**HUNTINGTON TOWN**  
UNINCORPORATED  
PERMITTED

Permits for apartments 300 to 650 square feet may be obtained from the Zoning Board of Appeals. Off street parking must be used; second entrance must be out of sight on side or rear of building; additional utilities must be hidden. No registered sex offenders. No more than 10 percent of homes in a half-mile radius may have apartments.

**ISLIP TOWN**  
UNINCORPORATED  
PERMITTED

Permits for apartments of 300 to 800 square feet, but no more than 50 percent of the home's area, may be obtained from the Zoning Board of Appeals after a hearing and notice to neighbors. Renewable every three years. No basement apartments.

**RIVERHEAD TOWN**  
UNINCORPORATED  
PERMITTED

**SHELTER ISLAND TOWN**  
UNINCORPORATED  
PERMITTED

**SMITHTOWN TOWN**  
UNINCORPORATED  
FAMILY AND/OR DOMESTIC STAFF ONLY

Immediate family. Relaxed in 2012 to allow separate entrances and below-grade apartments.

**SOUTHAMPTON TOWN**  
UNINCORPORATED  
LIMITED

**SOUTHOLD TOWN**  
UNINCORPORATED  
PERMITTED

### NASSAU TOWNS/CITIES

ADU POLICY

**CITY OF GLEN COVE**  
NOT PERMITTED

**HEMPSTEAD TOWN**  
UNINCORPORATED  
LIMITED

"Mother-daughter" apartments for which siblings also may qualify; Senior Residence permits allow accessory apartment if homeowner or spouse is 62 years old.

**CITY OF LONG BEACH**  
NOT PERMITTED

**NORTH HEMPSTEAD TOWN**  
UNINCORPORATED  
LIMITED

"Mother-Daughter Residence" for parent or child, owner occupied, max 700 sf, must share utilities and entrance

**OYSTER BAY TOWN**  
UNINCORPORATED  
FAMILY AND/OR DOMESTIC STAFF ONLY

Domestic employees or family members. But as of 2012, "Parent child residence" can include steps, in-laws or grandparents/grandchildren.

### INCORPORATED VILLAGES

ADU POLICY

**AMITYVILLE**  
LIMITED

By special exception from the Zoning Board of Appeals: "Parent-Child Residences" on lots of at least 2/3 acre; and renewals of owner-occupied two-family dwellings.

**ASHAROKEN**  
NOT PERMITTED

**ATLANTIC BEACH**  
NOT PERMITTED

**BABYLON**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
Family only

**BAXTER ESTATES**  
NOT PERMITTED

**BAYVILLE**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
Parents or children only.

**BELLE TERRE**  
NOT PERMITTED

**BELLEROSE**  
NOT PERMITTED

**BELLPORT**  
NOT PERMITTED

**BRIGHTWATERS**  
GRANDFATHERED  
Eight apartments on the books.

**BROOKVILLE**  
NOT PERMITTED

**CEDARHURST**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
Mother-daughter.

**CENTRE ISLAND**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
For domestic servants, or with a lot large enough for a second single-family home.

**COVE NECK**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
Restricted to dwelling units legal before Sept. 11, 1985. For domestic servants, family members, or with a lot large enough for a second single-family home.

**DERING HARBOR**  
NOT PERMITTED

**EAST HAMPTON**  
LIMITED  
In certain timber-framed landmarked buildings, or over stores

**EAST HILLS**  
NOT PERMITTED

**EAST ROCKAWAY**  
NOT PERMITTED

**EAST WILLISTON**  
NOT PERMITTED

**FARMINGDALE**  
NOT PERMITTED

**FLORAL PARK**  
GRANDFATHERED

**FLOWER HILL**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
A second kitchen for children or parents of the homeowner.

**FREEPORT**  
NOT PERMITTED

**GARDEN CITY**  
NOT PERMITTED

**GREAT NECK**  
NOT PERMITTED

**GREAT NECK ESTATES**  
NOT PERMITTED

**GREAT NECK PLAZA**  
NOT PERMITTED

**GREENPORT**  
LIMITED

A small number of artists' units. Two-family houses are common in the village.

**HEAD OF THE HARBOR**  
NOT PERMITTED

**HEMPSTEAD**  
NOT PERMITTED

**HEWLETT BAY PARK**  
NOT PERMITTED

**HEWLETT HARBOR**  
NOT PERMITTED

**HEWLETT NECK**  
NOT PERMITTED

**HUNTINGTON BAY**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
Family and domestic employees only; no rentals.

**ISLAND PARK**  
FAMILY AND/OR DOMESTIC STAFF ONLY

"Mother-Daughter/Father-Son" unit restricted to a "blood relative" of the legal owner, defined as a parent, child, adoptive child, grandparent, grandchild or sibling. The accessory unit must have unobstructed access to the main part of the house.

**ISLANDIA**  
NOT PERMITTED

**KENSINGTON**  
NOT PERMITTED

**KINGS POINT**  
NOT PERMITTED

**LAKE GROVE**  
NOT PERMITTED

**LAKE SUCCESS**  
NOT PERMITTED

**LATTINGTOWN**  
LIMITED

Lot must be large enough to accommodate an additional single-family home within existing zoning.

**LAUREL HOLLOW**  
LIMITED

Guesthouses designed or equipped for anyone but servants, caretakers or chauffeurs must meet all acreage, design and setback requirements for an additional single family home.

**LAWRENCE**  
GRANDFATHERED

**LINDENHURST**  
PERMITTED

Single-family homeowners may apply for a "temporary two-family permit" or approval of a second kitchen; owner occupancy is required.

**LLOYD HARBOR**  
NOT PERMITTED

**LYNBROOK**  
NOT PERMITTED

**MALVERNE**  
LIMITED

Special exceptions for temporary hardship

**MANORHAVEN**  
NOT PERMITTED

**MASSAPEQUA PARK**  
FAMILY AND/OR DOMESTIC STAFF ONLY  
Family only

## INCORPORATED VILLAGES—continued

ADU POLICY

### MASTIC BEACH

FAMILY AND/OR DOMESTIC STAFF ONLY

Family only

### MATINECOCK

LIMITED

For domestic servants, or unrestricted if dwelling was legal before July 1, 2003 on a lot large enough to accommodate two single-family homes.

### MILL NECK

NOT PERMITTED

### MINEOLA

NOT PERMITTED

### MUNSEY PARK

NOT PERMITTED

### MUTTONTOWN

LIMITED

For domestic employees; or unrestricted if the unit was legal prior to November 1, 1973 and the lot has at least two acres for each dwelling.

### NEW HYDE PARK

FAMILY AND/OR DOMESTIC STAFF ONLY

Family only, or an owner must be 62 or older with earned household income of \$15,000 or less; extensive permit and inspection requirements

### NISSEQUOGUE

NOT PERMITTED

### NORTH HAVEN

NOT PERMITTED

### NORTH HILLS

NOT PERMITTED

### NORTHPORT

NOT PERMITTED

### OCEAN BEACH

NOT PERMITTED

### OLD BROOKVILLE

NOT PERMITTED

### OLD FIELD

NOT PERMITTED

### OLD WESTBURY

NOT PERMITTED

### OYSTER BAY COVE

GRANDFATHERED

An accessory dwelling must meet all zoning requirements of a second single-family home. Those legal before February 1988 may house anyone; all others may only be used by domestic employees, caretakers or chauffeurs.

### PATCHOGUE

NOT PERMITTED

### PLANDOME

NOT PERMITTED

### PLANDOME HEIGHTS

NOT PERMITTED

### PLANDOME MANOR

NOT PERMITTED

### POQUOTT

NOT PERMITTED

### PORT JEFFERSON

NOT PERMITTED

### PORT WASHINGTON NORTH

GRANDFATHERED

### QUOGUE

NOT PERMITTED

### ROCKVILLE CENTRE

NOT PERMITTED

### ROSLYN

NOT PERMITTED

### ROSLYN ESTATES

NOT PERMITTED

### ROSLYN HARBOR

NOT PERMITTED

### RUSSELL GARDENS

NOT PERMITTED

### SADDLE ROCK

NOT PERMITTED

### SAG HARBOR

PERMITTED

Incentives provided to encourage development of apartments for low-moderate income residents, emergency services and hospital workers, teachers, civil servants and local business employees. Permits may be transferred. Amnesty for legalizing units.

### SAGAPONACK

NOT PERMITTED

Resident agricultural workers may be housed on an active farm; no more than six workers per house per 25 acres.

### SALTAIRE

NOT PERMITTED

### SANDS POINT

NOT PERMITTED

### SEA CLIFF

FAMILY AND/OR DOMESTIC STAFF ONLY

Family only

### SHOREHAM

FAMILY AND/OR DOMESTIC STAFF ONLY

Family and domestic employees only

### SOUTH FLORAL PARK

NOT PERMITTED

### SOUTHAMPTON

PERMITTED

Preference given to residents or local employees; limited to 20 units

### STEWART MANOR

NOT PERMITTED

### THOMASTON

NOT PERMITTED

### UPPER BROOKVILLE

NOT PERMITTED

### VALLEY STREAM

FAMILY AND/OR DOMESTIC STAFF ONLY

Family only

### VILLAGE OF THE BRANCH

NOT PERMITTED

### WEST HAMPTON DUNES

PERMITTED

### WESTBURY

PERMITTED

Accessory apartments covered by rental dwelling permit rules, but these do not limit the size of the unit or require owner occupancy.

### WESTHAMPTON BEACH

PERMITTED

For family; low/moderate income; emergency services workers; active volunteers; graduates of a local high school; or municipal or local employees in the town or village.

### WILLISTON PARK

LIMITED

Board of Appeals may grant two-year "special exception" permits in cases of demonstrated medical or financial hardship.

### WOODSBURGH

NOT PERMITTED

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For other ADU designs see: [Buildabetterburb.org](http://Buildabetterburb.org) articles including,

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**LONG ISLAND  
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