

ACCESSORY APARTMENT ZONING AMENDMENTS
FREQUENTLY ASKED QUESTIONS
MAY 4, 2023

Also refer to the list of **GENERAL DEFINITIONS** at the end of these questions.

1. What is an Accessory Apartment?

An Accessory Apartment is a separate home of limited size with its own sleeping, cooking and bathroom facilities which can be located within, attached to, or detached from the primary single-family home on a single lot. An Accessory Apartment is also known as an Accessory Dwelling Unit (ADU) or in-law apartment.

2. What is the main goal of these amendments?

To increase the number of smaller year-round rental units to sustain our workforce, prevent displacement of local residents, facilitate “aging in place” for our seniors, and allow for family members to live in close proximity while having their own separate spaces.

3. Who can build an Accessory Apartment?

Residential property owners who occupy their home as their primary residence. Depending upon their needs, the property owner can occupy either the primary residence or the accessory apartment and must document this through an annual Affidavit to the Building Department. Only one Accessory Apartment per eligible lot is allowed.

4. Who can't build an Accessory Apartment?

Not all properties are eligible to build an Accessory Apartment. Lots less than 10,000 square feet in size, those which already contain more than one single-family home, have an Affordable housing Deed restriction, or if the lot was developed under a Comprehensive Permit (Chapter 40B) which typically already include smaller lots and higher densities. Accessory Apartments are also not allowed in our B3 Business District or in our optional Hotel/Motel or Village Center overlay districts as shown on the [Zoning Map](#).

5. Who can rent an Accessory Apartment, what are the rents and how long is the lease?

The property owner determines who will rent their Accessory Apartment and sets the rental rate. All lease agreements for the Accessory Apartment must be for a minimum of 12 consecutive months with no seasonal or Short-Term Rentals (STRs) and no subletting or room rentals. For properties with an Accessory Apartment, the owner-occupied unit cannot be rented in any manner, including STRs. In comparison to this proposed amendment, the current Accessory Apartment bylaw limits the accessory units to Family-Related, or Affordable units with maximum rental rates and income eligibility requirements.

6. Can I sell the Accessory Apartment?

No, Accessory Apartments shall not be sold separately nor placed in a condominium form of ownership.

7. How will we maintain the character of our residential neighborhoods?

Accessory apartments are to be secondary to the primary residence and designed to retain the appearance of a single-family residential property and be consistent with the design of the primary home. View the [AARP ADU Brochure](#) for examples of different types of Accessory Apartments. Two off-street parking spaces must be provided for the Accessory Apartment and cannot be located

within the green space in front of the primary residence nor within ten feet of the side or rear property lines. Any stormwater runoff from new parking or structures will be retained on-site.

8. What is the minimum lot size to construct an Accessory Apartment?

The minimum lot size for a studio or 1-bedroom Accessory Apartment is 10,000 square feet. The minimum lot size for a 2-bedroom is 15,000 square feet. An Accessory Apartment cannot contain more than 2-bedrooms.

9. How can I find out the size of my lot?

There are multiple ways to find out the size of your parcel or those in your neighborhood:

- **Assessor's on-line database at:** <https://gis.vgsi.com/yarmouthma/Search.aspx>
Type in your address and scroll down to land size. To convert your lot size in acres to square feet, multiply by 43,560.
- **Geographic Information Systems at:**
<https://www.yarmouth.ma.us/1604/Geographic-Information-Systems-GIS>
Go to the Interactive GIS Map and type in your address in the search box and hit enter. The map will go to that address, and you can click on the parcel with your cursor to see the square footage.

10. What are the size limitations on Accessory Apartments?

Studio and 1-bedroom accessory apartments shall not be larger than 50% of the habitable floor area of the primary residence, or 800 square feet (sf), whichever is smaller. Two-bedroom accessory apartments shall not be larger than 50% of the habitable floor area of the primary residence, or 900 sf, whichever is smaller. Regardless of the habitable floor area of the primary residence, accessory apartments shall not be less than 350 square feet. (Garages, unfinished attics, basements, common entries, porches and decks are excluded from the habitable floor area calculations.)

As an example, a 900 square foot (sf) ranch with a 200 sf attached garage and 600 sf finished basement, would be considered to have only 900 sf of habitable floor area (garages and basements are excluded) and could have an Accessory Apartment of up to 450 sf.

11. Are Special Permits required for Accessory Apartments?

Special Permits are required for Accessory Apartment uses, except for three specific circumstances where they would be a By-right use:

- a. Fully Conforming Lot and Structure: The property remains in full compliance with the current height requirements and dimensional standards (i.e., lot size, distance of structure from property line, maximum building coverage, etc.); OR
- b. Existing Conforming or Non-Conforming Structures: The accessory apartment will be fully located within the existing primary residence without increase in structure height or size except to provide adequate means of entrance/egress for the unit, and is limited to a studio or 1-bedroom unit; OR
- c. Expansion or New Construction: The expansion or addition to the existing structure, or a new separate detached structure, for an accessory apartment where the new construction is in full compliance with the current height requirements and dimensional standards, is constructed on a minimum 25,000 square foot lot, and is limited to a studio or 1-bedroom unit.

Regardless of the above, an Accessory Apartment use requires a Special Permit when located in the Aquifer Protection District (APD).

12. What is the difference between a Special Permit and By-right Zoning?

Special Permit approval requires a Public Hearing before the Zoning Board of Appeals (ZBA) with mailed notification to abutters within 300' of the property and a legal notice in the Cape Cod Times. This allows for neighbors to know what is happening on an abutting or nearby property and provide comments to the ZBA, either in writing or at the Hearing. A Special Permit Decision, which includes a 20-day appeal period, is needed prior to applying for a Building Permit and must be recorded at the Barnstable Registry of Deeds. Applicants do not need to be represented by an attorney to apply for a Special Permit. By-Right projects and uses meet all the requirements of the Zoning Bylaw with no relief required from the ZBA, and a Building Permit application can be submitted to the Building Department. All provisions of the Zoning Bylaw and other applicable state and local regulations still apply to By-right projects and uses.

13. How many new Accessory Apartments is the Town anticipating?

It is anticipated that there may be an initial uptick in accessory apartments due to some pent-up demand, however, there are other factors which will limit accessory apartment creation such as construction costs, need to meet other codes, especially the Building Code and Health Regulations, and not everyone wants to be a landlord or live in such close proximity to others. Although difficult to predict, other communities are seeing in the range of 8-11 Accessory Apartments annually, although Barnstable saw about 24 units in 2022.

14. How are we protecting our water quality?

Properties located within the [Zone 2 Areas of Wellhead Contributions](#) will be limited in the number of bedrooms allowed on their lots to 1 bedroom/10,000 square feet, or the grandfathered number of bedrooms on the property. To create an Accessory Apartment in the Zone 2, elimination of a bedroom in the primary residence may be required.

Outside the Zone 2, additional bedrooms could be added if the existing or expanded septic system meets all Health Regulations. As noted previously, a significant number of new bedrooms are not anticipated from Accessory Apartments with many of the units anticipated to be 1-bedroom.

Yarmouth is making great headway in improving our water quality through the implementation of our municipal wastewater program, Phase 1 of which was funded at the 2023 Annual Town Meeting. The future build-out analysis completed for this program included 1,000 new bedrooms throughout all eight phases of the program. Although connections to existing neighborhoods will take time to implement, significant progress is being made.

15. Who is keeping track of Accessory Apartments and how are the rules enforced?

Accessory Apartments are currently and will continue to be monitored and regulated through the Building and Health Departments. Units that will be rented are required to get a rental certificate from the Health Department which includes inspections. Accessory Apartments which will be used by family members and not rented are inspected every 2-years by the Building Department. Affidavits to the Building Department are required annually for all Accessory Apartments. The Affidavit for rental Accessory Apartments must include a copy of the lease.

16. What happens to the existing Family-Related or Affordable Accessory Apartments?

These units can continue as long as the conditions of their Special Permits and other restrictions are met. Provisions have also been included to allow for the conversion of these units to unrestricted Accessory Apartments via a Special Permit.

17. What are other Towns doing?

Most Towns on Cape Cod have adopted their Accessory Apartment or ADU Bylaws in recent years to foster the creation of much needed year-round rental housing. However, each community is different and they have all tailored the changes to meet their needs with various provisions to protect the residential neighborhoods. Our proposed amendments are not significantly different from other Cape Towns.

18. What is the schedule for adopting these Accessory Apartment amendments?

The Planning Board has been working since October 2022 on amendments to the Accessory Apartment Bylaw and anticipate presenting them at the 2023 fall Special Town Meeting, typically held at the end of October. To garner more public input on these amendments, the Planning Board will be holding *Listening Sessions* in June as well as meeting with the Board of Selectmen. The Planning Board will review the input received and make any desired adjustment before holding the required Public Hearing, currently anticipated for September 6th. Afterward, the Planning Board can decide if further changes are needed before making a formal recommendation on the amendments. The Board of Selectmen will also review and make recommendations on the amendments before placing the Article on the Warrant for the fall Special Town Meeting, where it would need to pass by a 2/3rd vote. Although effective on the date adopted at Town Meeting, the Article also needs to be approved by the Attorney General, typically within 120 days of Town Meeting.

GENERAL DEFINITIONS:

1. **Zoning Bylaw:** Zoning is a land use law that helps define what the residents want Yarmouth to look like by identifying where specific uses are allowed throughout Town and regulating how development is laid out on a parcel. These parameters are outlined in the Zoning Bylaw and Zoning Map.
2. **Accessory Dwelling Unit (ADU) or Accessory Apartment:** An Accessory Apartment is also known as an Accessory Dwelling Unit (ADU) or in-law apartment. It is a smaller separate home of limited size with its own sleeping, cooking and bathroom facilities which can be located within, attached to, or adjacent to the primary single-family home on a single lot.
3. **Zone 2 Areas of Wellhead Contributions:** The Zone 2 is that area of an aquifer which contributes water to a drinking water well. In general, properties located within this Zone 2 are limited to one bedroom per 10,000 square feet of land area. If your existing house and lot do not meet the minimum standard, you may be grandfathered, but cannot increase the number of bedrooms on the property.
4. **Special Permits (SP):** Relief allowed via Special Permit from the Zoning Bylaw, typically through the Zoning Board of Appeals (ZBA), or sometimes the Planning Board. Requires a Public Hearing with mailed notification to abutters within 300' of the property and legal notice in the Cape Cod Times. To approve a Special Permit, it must be shown that no undue nuisance, hazard or congestion will be created and that there will be no substantial harm to the established or future character of the neighborhood or town.
5. **By-Right:** The use and development meet the requirements of the Zoning Bylaw and does not require any relief through a Special Permit or Variance. All provisions of the Zoning Bylaw and other applicable state and local regulations still apply to By-Right projects and uses.

6. **Variances:** Requires relief from the Zoning Bylaw from the Zoning Board of Appeals because the use or some aspect of the development is prohibited by the Zoning Bylaw. Criteria for issuance of a Variance is more stringent than for a Special Permit.
7. **Density:** Residential density measures the number of dwelling units (homes) which can be located on a property depending upon its size and the allowed zoning density, typically expressed as dwelling units/acre of land.
8. **Dimensional Standards:** Refers to development requirements that establish parameters such as maximum building height, property line setbacks (distance of structures to the property line), maximum building coverage on the lot (percentage of the lot taken up by buildings), minimum lot size, and minimum frontage along a street.
9. **Grandfathered or non-conforming lots or structures:** These are lots and/or structures that do not meet the dimensional standards in the current Zoning Bylaw but were in compliance at the time the lot was formed, or the building constructed (or relief was previously given). **Short-Term Rental:** Rental of a room or home for 1-31 consecutive days at a time with all accommodations reserved in advance, such as through Airbnb or vrbo. Typically used on Cape Cod as a vacation rental.
10. **Affordable Housing:** Housing targeted to and affordable for households that meet specific income eligibility levels, typically households earning below 80% of the metropolitan area's median income (or AMI). Affordable Housing Units have a deed restriction, limits on maximum rents that can be charged, and must be marketed fairly to income eligible households.
11. **Comprehensive Permit (Chapter 40B):** The Comprehensive Permit Act is a Massachusetts law that allows developers of affordable housing to override certain aspects of municipal zoning bylaws (including density and subdivisions) to promote the creation of affordable housing. As Yarmouth has less than 10% of its total housing units on the State's Subsidized Housing Inventory (SHI), developers are eligible for Chapter 40B projects. At least 20-25% of the housing units must be affordable to lower income households who earn no more than 80% of the AMI. Projects must seek a Comprehensive Permit from the Zoning Board of Appeals.