

Draft 17 – Redline edits show changes made to Draft 12 which was presented at the public Listening Sessions in June 2023

407. ACCESSORY APARTMENTS.

407.1 **Purpose and Intent:** The intent of this bylaw is to:

1. Broaden the range of housing choices available to residents by increasing the number of smaller dwelling units available in Yarmouth for year-round rental while protecting the character, appearance and property values of single-family residential neighborhoods.
2. Address the need for additional year-round rental housing units without significantly impacting our environmental resources.
3. Allow for better utilization and expansion of our existing housing stock.
4. Provide housing opportunities to support a strong, stable and diverse year-round community and a sustainable local workforce, prevent displacement of local residents, and facilitate “aging in place” for our senior citizens.
5. Provide an opportunity for family members who choose to live in close proximity, but separate from other family members, to remain within a family environment.

407.2 **Eligibility:** The following types of properties or developments are not eligible for an accessory apartment:

1. Deed restricted Affordable housing units.
2. All lots developed under a Comprehensive Permit (Chapter 40B).
3. Lots with more than one single-family dwelling unit.

407.3 **General Standards and Provisions:** All accessory apartments shall adhere to the following minimum requirements:

1. Accessory apartments shall be complete and separate housekeeping units that function independently from a primary single-family dwelling unit and shall include independent sleeping, cooking and sanitary facilities. ~~Kitchens shall include at a minimum a sink, stove, and minimum 10 cubic foot refrigerator/freezer.~~ No variances shall be permitted from this requirement.
2. Only one accessory apartment per lot shall be allowed. No variance shall be permitted from this requirement.
3. Dimensional Requirements:
 - a. Minimum lot size shall be 10,000 square feet for studio or 1-bedroom accessory apartments. Minimum lot size shall be 15,000 square feet for 2-bedroom accessory apartments.
 - b. Lots developed with an accessory apartment shall not exceed the allowable building coverage per section 203.5.
 - c. New construction or additions shall not exceed the maximum allowable building height allowed in section 203.4.
 - d. New detached accessory structures that include an accessory apartment must

- meet the dimensional requirements of section 203.5.
- e. Pre-existing, non-conforming structures to be converted to an accessory apartment must receive a special permit as outlined in Section 104.
 - f. The expansion to pre-existing, non-conforming structures for an accessory apartment must meet the setback requirements of section 203.5.
4. An accessory apartment may be located within, or attached to, a principal residential structure or in a detached accessory building on the same lot and shall clearly be subordinate to the principal structure. An accessory apartment shall maintain two separate means of egress.
 5. The accessory apartment shall be designed so that, to the maximum extent practical, the appearance of the property and buildings remains that of a single-family residence and is consistent with the design of the principal single-family dwelling, considering the following: architectural details, roof design, building spacing and orientation, door and window location, and building materials.
 6. An accessory apartment shall contain no more than 2-bedrooms and no variance shall be permitted from this requirement. Studio and 1-bedroom accessory apartments shall have a maximum habitable floor area that is not larger than 50% of the habitable floor area of the principal single family dwelling unit, or 800 square feet, whichever is smaller. Two-bedroom accessory apartments shall have a maximum habitable floor area that is not larger than 50% of the habitable floor area of the principal single family dwelling unit, or 900 square feet, whichever is smaller. Regardless of habitable floor area of the principal dwelling, accessory apartments shall not be less than 350 square feet. Habitable floor area for the principal single family dwelling shall exclude Ggarages, unfinished attics, all basements, common entries, porches and decks—~~are excluded from the habitable floor area calculations.~~ Habitable floor area for accessory apartments shall include all habitable spaces, closets and finished storage.
 7. At least two (2) off-street parking spaces on the premises shall be required for use by residents of the principal dwelling unit and two (2) additional off-street parking spaces shall be required for use by the residents of the accessory apartment. There shall be no parking in existing green space in front of the principal dwelling unit, and no expansion of parking into green space areas in front of the principal dwelling unit. No new parking created for this use is allowed within ten (10) feet of the side or rear property lines. Where appropriate and feasible, new parking and access to the new parking created for this use shall be adequately screened from abutting properties through existing vegetation, new plantings, or fencing.
 8. All stormwater runoff from new impervious parking areas and new structures associated with the accessory apartment shall be retained on the property.
 9. An accessory apartment is not intended for sale and shall not be held in separate ownership from the principal structure/dwelling unit nor placed in a condominium form of ownership.
 10. Site plans (including parking locations and any proposed landscaping), and floor plans are required for all accessory apartments. In addition, architectural plans showing elevations and building materials shall be provided for any additions or

new construction.

11. The owners of the principal structure shall occupy, as their primary residence, either the principal dwelling unit or the accessory apartment. If the owner intends to occupy the accessory apartment rather than the principal structure, the principal structure will then be designated as the “accessory apartment” for the purposes of this bylaw. The owner-occupied unit shall not be rented in any manner.
12. All accessory apartments shall be for year-round use by tenants who will be making the accessory apartment their primary residence. All lease agreements shall be for a minimum of twelve (12) consecutive months with no seasonal or Short-Term Rentals and no subletting or room rentals.
13. No commercial uses shall be allowed within an accessory apartment except for those meeting the Definitions of Home Offices, and Home Occupations per Section 416.
14. An accessory apartment shall adhere to all applicable State and local laws regulating new construction or residential use including the State Building Code, the applicable plumbing, electrical, fire, health, sanitary, conservation and historic regulations and bylaws. A Certificate of Occupancy shall be required for all accessory apartments.

407.4 Permit Procedure and Requirements:

- ~~1. All accessory apartment uses shall require a Special Permit from the Zoning Board of Appeals, except under the following conditions, when a permit may be issued by the Building Commissioner.~~
 - ~~a. Fully Conforming Lot and Structure: With the construction of the proposed accessory apartment, the property will remain in full compliance with the current height requirements per Section 203.4 and the current dimensional standards per Section 203.5; OR~~
 - ~~b. Existing Conforming or Non-Conforming Structures: The accessory apartment will be fully located within the existing principal dwelling 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 of the existing structure or a new detached structure for an accessory apartment where the expansion/new construction is in full compliance with the current height requirements per Section 203.4 and the current dimensional standards per Section 203.5, is constructed on a minimum 25,000 square foot lot, and is limited to a studio or 1-bedroom unit.~~

407.45 Records and Inspections:

407.45.1 Documentation: The property owner shall be required to file an notarized affidavit with the Building Department annually for rental apartments and every 2-years for apartments used by family members by January 31st of each year, said affidavit

including:

1. Identifying whether the principal dwelling or the accessory apartment will be used as the principal residence of the owner and not rented in any manner, ~~and~~ that the remaining unit will be leased for a period of not less than 12 consecutive months, ~~with a copy of the lease agreement provided with the affidavit, and the owner will adhere to the requirements of Section 407 of the Zoning Bylaw. A copy of the lease agreement may be required upon request of the Building Commissioner.~~ OR
2. Identifying whether the principal dwelling or the accessory apartment will be used as the principal residence of the owner and not rented in any manner, ~~and~~ that the remaining unit will not be rented as it is being utilized by a family member, with the name and relationship of the family member identified, ~~and the owner will adhere to the requirements of Section 407 of the Zoning Bylaw.~~ A family member shall be related to the owner(s) by blood, marriage or law, or other long-term family-like relationship that is care-giving or parental in nature.

407.54.2 Inspections:

1. All accessory apartments to be rented shall be registered annually through the Yarmouth Health Department and shall comply with any and all requirements of the Board of Health.
2. All accessory apartments which are not rented and are used by a family member shall be inspected once every two (2) years by the Building Commissioner for which there may be an additional user fee in the amount set by the Board of Selectmen, payable at the date of inspection.

407.54.3 The Building Commissioner and/or Health Department shall maintain a running, up-to-date log of approved and/or inspected accessory apartments.

407.54.4. Failure to pass inspection or submit annual affidavits may be cause for the Building Commissioner to implement enforcement, including but not limited to a requirement for cessation of the accessory apartment use and removal of cooking, sanitary, sleeping facilities or structural portions previously approved, associated with the addition of the accessory apartment. Zoning Bylaw violations are subject to penalties outlined in Section 101.3.

407.56 Existing Family-Related Accessory Apartments and Affordable Accessory Apartments created before the effective date of this bylaw:

407.56.1 Existing Family-Related Accessory Apartments created before the effective date of this bylaw:

1. Lawful family-related accessory apartments existing at the effective date of this

bylaw may continue under the issued Special Permit and Declaration of Covenants recorded at the Barnstable County Registry of Deeds. The requirements of Section 407.45 - Records and Inspections, shall apply to existing family-related accessory apartments.

2. The Special Permit and Declaration of Covenants for a family-related accessory apartment may be terminated by the owner(s) provided the family-related accessory apartment is removed and upon a satisfactory inspection by the Building Commissioner.
3. Lawfully existing family-related accessory apartments may be converted into a rental accessory apartment through a Special Permit from the Zoning Board of Appeals. In this circumstance, the Board of Appeals may waive the General Standards and Provisions of Section 407.3 through the Special Permit but shall not allow for an increase in the accessory apartment size. Upon issuance of a Special Permit, any previously filed Covenants shall be released by the Zoning Board of Appeals with an appropriate recording at the Barnstable Registry of Deeds.

407.56.2 Existing Affordable Accessory Apartments created before the effective date of this bylaw:

1. Lawful Affordable Accessory Apartments, existing as of the effective date of this bylaw, may continue under the issued Special Permit, Declaration of Covenants and Affordable Housing Restriction recorded at the Barnstable County Registry of Deeds. The requirements of Section 407.45 - Records and Inspections, shall apply to existing Affordable Accessory Apartments.
2. The Special Permit, Declaration of Covenants and Affordable Housing Restriction for an affordable accessory apartment may be terminated by the owner(s) provided the affordable accessory apartment is removed and upon a satisfactory inspection by the Building Commissioner and in accordance with the Affordable Housing Restriction, as may be applicable.
3. Lawfully existing Affordable Accessory Apartments may be converted into a rental accessory apartment through a Special Permit from the Zoning Board of Appeals, provided that such conversion is not prohibited by the terms of any affordable housing restriction governing the use of the unit. In this circumstance, the Board of Appeals may waive the General Standards and Provisions of Section 407.3 through the Special Permit, but shall not allow for an increase in the accessory apartment size. Upon issuance of a Special Permit, any previously filed Covenants or Affordable Housing Restrictions shall be released with an appropriate recording at the Barnstable Registry of Deeds.

407.76 **Transfer Upon Sale:**

407.76.1 Accessory Apartments created after the effective date of this bylaw:

1. The rights and requirements related to a lawfully developed accessory apartment

created after the effective date of this bylaw shall transfer ~~upon~~ sale of the property. New property owners shall provide an affidavit to the Building Commissioner per Section 407.45 within 4590 days of the sale if the property was transferred with a tenant in place, otherwise, the owners shall provide the affidavit prior to occupying or renting the accessory apartment.

407.67.2 Family-Related Accessory Apartments: The following shall govern the transfer of ownership of Family Related Accessory Apartments in existence prior to the effective date of this bylaw:

1. The Special Permit for a family-related accessory apartment shall terminate upon the sale of the property or transfer of title to the dwelling unless the new owner(s) record a new Declaration of Covenants at the Barnstable County Registry of Deeds at the time of transfer or within 4590 days of the sale, agreeing to abide by the prior restrictions of the Special Permit. The new Declaration of Covenants must contain the endorsement of the Building Commissioner that the family-related accessory apartment and the tenant continue to conform to eligibility requirements. The new Declaration of Covenants shall state that the right to use a family-related accessory apartment may cease upon transfer of title. A copy of the recorded Declaration of Covenants shall be provided to the Board of Appeals, the Building Department and the Board of Health.
2. If no action is taken by the new owner(s) at the time of transfer or within 4590 days of the sale, then the new owner(s) must apply for re-approval of the Special Permit by the Board of Appeals, or complete the conversion of the unit per Section 407.56.
3. The requirements of Section 407.45 - Records and Inspections, shall apply to existing family-related accessory apartments.

407.67.3 Affordable Accessory Apartments: The transfer of affordable accessory apartments shall, in all respects, comply with any provisions of the affordable housing restriction encumbering the same. Additionally, the following shall govern the transfer of ownership of Affordable Accessory Apartments in existence prior to the effective date of this bylaw:

1. The Special Permit for an affordable accessory apartment shall terminate upon the sale of the property or transfer of title to the dwelling unless the new owner(s) files on the subject property a new Declaration of Covenants and, as may be necessary, an Affordable Housing Restriction at the Barnstable County Registry of Deeds at the time of transfer or within 4590 days of the sale, agreeing to abide by the prior restrictions of the Special Permit and any existing affordable housing restrictions, as may be applicable. In the event a new affordable housing restriction is to be executed and recorded, the following provisions shall apply:
 - a. Maximum rents permitted: Affordable accessory apartments shall be rented only to low-income households for periods not less than one year. Maximum

rent paid shall be equal to no more than 30% of the theoretical income of a household in the Barnstable-Yarmouth Metropolitan Statistical Area (MSA) earning 70% of the Area Median Income (AMI), as published annually by the U.S. Department of Housing and Urban Development (HUD).

- b. Guidelines for income eligibility: All applicants for occupancy of an affordable accessory apartment shall, at the time of initial rental application, submit to the town, or to the town's agent, all necessary documentation to confirm their eligibility for the unit. Eligible low-income households shall have an income of no more than 80% of the current Area Median Income (AMI) in the Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and assets meeting program guidelines.
 - c. All affordable housing restrictions shall be in a form approved by the Town and Town Counsel.
2. The new Declaration of Covenants must contain the endorsement of the Building Commissioner and the Town's delegated affordable housing inspector that the affordable accessory apartment and the tenant continue to conform to eligibility requirements. A copy of the recorded Declaration of Covenants shall be provided to the Board of Appeals, the Building Department and the Board of Health.
 3. If no action is taken by the new owner(s) at the time of transfer or within 4590 days of the sale, then the new owner(s) must apply for re-approval of the Special Permit by the Board of Appeals, or complete the conversion of the unit per Section 407.65.
 4. The requirements of Section 407.5-4 - Records and Inspections, shall apply to existing affordable accessory apartments.

EXISTING USE TABLE - Keep Accessory Apartments all by Special Permit (remains as is):

202.5 Use Regulation Table	Res	RS-40	B1 ²¹	B2 ²¹	B3 ²¹	RMDOD ⁴⁴	MU	APD	AED	MOD	HMOD 1	HMOD 2	VC 1	VC 2	VC 3	VC 4
A. RESIDENTIAL																
A10 Accessory apartments	BA	BA	BA	BA	no	no	no	BA	no	BA	no	no	no	no	no	no

DEFINITIONS:

AFFORDABLE ACCESSORY APARTMENT – A secondary, separate housekeeping unit of limited size, with its own sleeping, cooking and sanitary facilities, located within, attached to, or adjacent to a primary single-family dwelling unit. An affordable accessory apartment shall have deed restrictions that hold rent to affordable housing guidelines set by the Town.

FAMILY-RELATED ACCESSORY APARTMENT – a secondary, separate housekeeping unit of limited size, with its own sleeping, cooking and sanitary facilities, which is located within, attached to, or adjacent to a primary single-family dwelling unit. ***A family member shall be related to the owner(s) by blood, marriage or law, or other long-term family-like relationship that is care giving or parental in nature.***

ACCESSORY APARTMENT – ***A secondary, separate housekeeping unit of limited size, with its own sleeping, cooking and sanitary facilities, located within, attached to, or adjacent to a primary single-family dwelling unit.***

PRIMARY RESIDENCE: A primary residence is the dwelling where a person lives for a majority of the year and is considered their permanent address. A person may have only one primary residence at any given time and is used for legal purposes such as determining where a person’s legal residency is.