

DRAFT WARRANT ARTICLE

ARTICLE XYZ – ADU_LOT MERGER_ACCESSORY STRUCTURES

The purpose of the proposed zoning bylaw amendments below is to amend the Accessory Dwelling Unit bylaw (§4.11) to be consistent with *MA Chapter 150 of the Acts of 2024, M.G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00*, which protects certain Accessory Dwelling Units (§7 and §8) and allows lots of a certain size and age, not buildable for 50 years, to be developed (§10). The amendments also add a maximum height to accessory structures.

To see if the Town of Dennis will amend the Dennis Zoning By-laws by Amending the following Sections:

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| 1. <u>§2.2.2</u> (Use Regulation Schedule); | Page 1 |
| 2. <u>§2.2.2 Note 8</u> (Use Regulation Schedule Note); | Page 1 |
| 3. <u>§2.3.2</u> (Intensity of Use); | Page 2 |
| 4. <u>§2.3.3.6</u> (Accessory Structures); | Page 2 |
| 5. <u>§2.4.1.2</u> (Non-Conforming Conditions); | Page 2 |
| 6. <u>§4.11. A</u> (Protected ADU); and Existing <u>§4.11</u> ADU; | Pages 3-6 |
| 7. <u>§5: DEFINITIONS.</u> | Page 7 |

NOTE: Proposed New Language is Underlined in Bold Italic print in Times New Roman font.

1. **§2.2.2 (Use Regulation Schedule);** Protected ADU shall be added to the Use Regulation Schedule.
 - 1.1. ADD **“by Special Permit”** to 2.k for second ADU or ADU over 900 sf requiring a Special Permit.
 - 1.2. ADD row **2.L** for **“Protected Accessory Dwelling Unit”** allowed in all districts except Industrial.

PRINCIPAL USES	DISTRICT									
	R-40 R-60	Quivet Neck/ CPRPD	RR	LB	EB	GC-I	GC-II GC-III	I	DPVC Area A	DPVC Area B
2 Residential Uses										
k. Accessory Dwelling Unit <u>by Special Permit</u>	S	<u>N</u>	S	S	N	N	S	N	S	S
<u>L. Protected Accessory Dwelling Unit</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>Y</u>

2. **§2.2.2 Note 8 (Use Regulation Schedule Note);** Language clarifying State law on “Lot Merger”:

- 2.1. ADD **§2.2.2 Note 8**

⁸ Lot Merger: New houses proposed on previously non-conforming, non-buildable “remainder” lots, must first provide a title attorneys opinion, to be confirmed by Town Counsel, that at the time of recording or endorsement, the lot conformed to then existing requirements of area, frontage, width, yard or depth before issuance of a Building Permit and the new single-family residential structure constructed on said lot shall have a recorded notice that the structure shall not exceed 1,850 square feet of heated living area, shall contain not less than 3 bedrooms and shall not be used as a seasonal home or short-term rental before issuance of a Certificate of Occupancy. NOTE: Pursuant to M.G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00, Section 10 of Massachusetts Chapter 150 of the Acts of 2024

- 3. **§2.3.2 (Intensity of Use);** Add lines to §2.3.2 for maximum Height for Accessory Structures.
 - 3.1. ADD the word **"FEET"** to the title of the Height column;
 - 3.2. ADD **"ACCESSORY STRUCTURES"** to type of structure column (first column).
 - 3.3. ADD **"IN ALL DISTRICTS W/ LESS THAN 6:12 SLOPE"** in 1st and **18'** in Height column,
 - 3.4. ADD **"IN ALL DISTRICTS W 6:12 – 12:12 SLOPE"** in 1st column and **25'** in Height column,

§2.3.2 Intensity of Use Schedule

	MINIMUM LOT REQUIREMENTS			MINIMUM YARD SETBACKS			MAXIMUM	
	AREA SF	FRONTAGE	WIDTH ft.	FRONT Ft	SIDE ft.	REAR ft.	TOTAL SITE COVER % LOT	HEIGHT STORIES/ <u>FEET</u>
<u>ACCESSORY STRUCTURES</u>								
<u>IN ALL DISTRICTS W/ LESS THAN 6:12 SLOPE</u>								<u>18'</u>
<u>IN ALL DISTRICTS WITH 6:12 – 12:12 SLOPE</u>								<u>25'</u>

- 4. **§2.3.3.6 (Accessory Structures);** Add 2.3.3.6. c. for All Accessory Structures Height.
 - 2.3.3.6.A.i-v for Accessory Structures with a footprint of 200 square feet or less... exists.
 - 2.3.3.6.B.i-iv for all other Accessory Structures exists.
- 4.1. ADD §2.3.3.6. c. for All Accessory Structures - Height

§2.3.3.6. c. All Accessory Structures

- i. **Height: The top of the ridge of the roof of an accessory structure may not be greater than Eighteen (18) feet above the top of the lowest floor elevation, except that a maximum height of twenty-five (25) feet shall be allowed for a structure with a roof pitch between 6:12 and 12:12.**

- 5. **§2.4.1.2 (NON-CONFORMING CONDITIONS);** Add §2.4.1.2(A)(7): Protected ADU permitted by the Building Commissioner.

§ 2.4 (NON-CONFORMING CONDITIONS)

§ 2.4.1.2 Change, Extension or Alteration: Buildings or structures that are nonconforming by dimensi...

§ 2.4.1.2.A. Building Department...

In the following circumstances, alteration, reconstruction, extension or structural change (collectively "alteration") to a single- or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right by the building commissioner without the need for further zoning relief from the Zoning Board of Appeals:

ADD §2.4.1.2(A)(7):

§2.4.1.2(A)(7) Accessory Dwelling Units ("ADUs") By-right Pursuant to G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00.

6. **§4.11. A (Protected ADU);**

To Dennis ZBL §4.11 Regulations Specific to Accessory Dwelling Units (ADU)

6.1. ADD §4.11. A (Protected ADU) before existing §4.11.

§ 4.11.A: Accessory Dwelling Units (“ADUs”) By-right Pursuant to G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00, one Protected Use ADU is allowed on a lot in the following Zoning Districts: R-40, R-60, Ouivet Neck/Crowe ’s Pasture Resource Protection District, RR, LL, GC-II, GC-III, DPVC Area A, and DPVC Area BA. Protected Use ADU is defined as a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in Gross Floor Area than 1/2 the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller and is proposed to be located on a Lot in a Single-Family Residential Zoning District and no other Accessory Dwelling Unit is located on said Lot. For purposes of this section, Gross Floor Area shall be the sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.

- a) Any Protected Use ADU created shall be prohibited from serving as a Short-Term Rental defined in General Laws Chapter 64G, Section 1. The minimum leasing term for the Accessory Dwelling Unit or the Principal Dwelling Unit shall be for a term greater than thirty-one (31) days.
- b) Any Protected Use ADU shall be subject to all state and local laws, rules and regulations promulgated, enforced, or otherwise within the jurisdiction of the Building Code, Board of Health Regulations and Conservation Commission and shall be subject to all Lot Coverage, Setback and Dimensional requirements and thresholds in the Dennis zoning bylaws.
- c) Any Protected Use ADU shall be housed in a structure subject to Building and Health Codes.
- d) Any Protected Use ADU may only be created on lots on which there already exists a Principal Dwelling.
- e) A Protected Use ADU shall be considered an “accessory use” to the principal use on the lot and shall be restricted so that the ADU is never divided by ownership from the principal structure.
- f) A Protected Use ADU shall be designed so that the appearance of the ADU will be consistent with the character and design of the principal dwelling as much as feasibly possible, as determined by the Building Inspector. To ascertain this, architectural or design plans must be submitted at the time of application for a Building Permit.

- g) *For ADU's not allowed by right, such as more than one (1) ADU 900 square foot or less in a single-family residential zoning district, or an ADU larger than 900 square feet in a single-family residential zoning district, or an ADU in an any district other than a single-family residential zoning district, there shall be a Special Permit for the use of land or structures for an accessory dwelling unit per § 4.11 of the Dennis Zoning Bylaws.*

6.2. ADD the following language to the existing ADU bylaw (§4.11) for ADU that still require a Special Permit.

§4.11.1 *Any ADU not protected pursuant to M.G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00 as described above in § 4.11.A , shall require a Special Permit, for which the following Special Permit requirements apply.* Any special permit issued for an ADU shall be subject to all state and local laws, rules and regulations promulgated, enforced, or otherwise within the jurisdiction of the Board of Health of the Town of Dennis. An applicant must follow all statutes, by-laws and regulations.

§4.11.2 An Accessory Dwelling Unit (ADU) *by Special Permit* may be created by converting space within an existing dwelling. An ADU may also be created by building or by creating new space attached by new or existing Conditioned Space (as defined in the Massachusetts Building Code 780 CMR 202) to a Principal Residential Structure. The following additional standards and conditions shall govern special permits issued under this subsection:

§4.11.3 An ADU *by Special Permit* may only be created on lots on which there already exists a Principal Residential Structure, and may only be created within an existing dwelling or by creating new space attached by new or existing Conditioned Space to such Principal Residential Structure.

§4.11.4 An ADU *by Special Permit* shall be subject to the following additional restrictions.

§4.11.4.1 Lot must be a minimum of 15,000 sf.

§4.11.4.2 There shall not be more than one ADU on a lot.

§4.11.4.3 Lots that exceed maximum lot coverage, i.e. pre-existing non-conforming lots shall not be permitted an ADU.

§4.11.4.4 Lots that are below 15% maximum lot coverage may be permitted to construct an addition up to the maximum lot coverage to accommodate an Accessory Dwelling Unit.

§4.11.4.5 Parking:

§4.11.4.5.1 Shall be on-site.

§4.11.4.5.2 Shall be incorporated to blend in with the existing residential parking on-site (i.e. garage and/or within the driveway or expanded driveway area)

§4.11.4.5.3 Shall not encroach on the 10 foot side line green area required under Section 2.3.4.1.b.

§4.11.4.6 An ADU *by Special Permit* shall not be located in a designated AE or V flood zone as regulated by the Dennis Flood Maps adopted on May 6, 2014.

§4.11.5 An ADU **by Special Permit** shall be considered an “accessory use” to the principal use on the lot and shall be restricted so that the ADU is never divided by ownership from the principal structure.

§4.11.6 Any lot containing an ADU **by Special Permit** shall be subject to a recorded restriction that shall restrict the lot owner’s ability to convey interest in the ADU separate from the owner of the Principal Residential Structure.

§4.11.7 A dwelling proposed to include an ADU **by Special Permit**:

§4.11.7.1 Shall be subject to the granting of a Special Permit by the Dennis Planning Board;

§4.11.7.2 May be expanded by the granting of a Special Permit which is based upon a finding by the Planning Board that the conditions present on the site are adequate to support the proposed use, protect the surrounding neighborhood and be consistent with all other restrictions found in this by-law.

§4.11.8 For the purposes of §4.11, **ADU by Special Permit**, one unit shall be owner occupied on a year-round basis, except for bona fide temporary absences during which the owner-occupied unit is not rented.

§4.11.9 The principal dwelling or the ADU will be used as the principal residence of the owner and the remaining dwelling will be leased for a minimum of twelve (12) consecutive months, with no subletting or assigning to occur and is prohibited from any use as rental units on a monthly, weekly or daily basis including, but not limited to, seasonal rental and rental through vacation rental services and websites. An ADU shall not be used for boarding, transient lodging, or other commercial use.

§4.11.10 Contextual Design

§4.11.10.1 If the primary entrance of an ADU **by Special Permit** is not proposed to be shared with that of the principal dwelling, such entrance shall be less visible from the street view of the principal dwelling than the main entrance of the principal dwelling.

§4.11.10.2 An ADU **by Special Permit** shall be designed so that, to the maximum extent practical, the appearance of the property on which it is to be located remains that of a single-family residential property and the privacy of abutting properties is maintained, considering the following: building architectural details, roof design, building spacing and orientation, building screening, door and window location, and building materials.

§4.11.11 Maximum Permits for ADUs **by Special Permit**,

(a) shall not exceed 9 in any calendar year.

(b) Any unused permits in any one calendar year shall not roll over to any subsequent calendar year.

(c) This provision will allow the Planning Board and other committees to study the impact of ADUs on the Town of Dennis and recommend future actions if needed. This provision 4.11.11 shall expire automatically on December 31, 2027 without further Town Meeting Action.

§4.11.12 Enforcement

4.11.12.1 Real property containing an ADU ***by Special Permit***, as described in this Section, for which a validly-issued Variance, Special Permit, Building Permit, or Occupancy Permit does not exist, may apply to the Building Department for an Occupancy Permit to continue use as an accessory dwelling unit provided the provisions of Section 4.11 and 3.1.2 are complied with.

4.11.12.2 To qualify under this Section, the unpermitted ADU must be a single accessory dwelling unit that is accessory to a single-family dwelling and must have been in existence prior to the date of adoption of this bylaw. It shall be the burden of the applicant to prove to the Building Department that the unlawful apartment was in existence before that date.

§4.11.13 Monitoring and Other Provisions, ***for an ADU by Special Permit:***

4.11.13.1 Prior to the issuance of a building permit or Special Permit, a copy of the deed shall be provided illustrating the continued ownership and an affidavit verifying continued occupancy of the property by the applicant for a minimum of the most recent six months.

§4.11.13.2 Prior to the issuance of a building permit or a Special Permit, a certificate in the form of a notarized affidavit to verify that the owner is and shall be in residence in one of the units shall be submitted to the Building Commissioner and to the Special Permit Granting Authority.

§4.11.13.3 The unit to be leased shall maintain a rental permit with the Dennis Board of Health.

§4.11.13.4 The property owner shall be required to annually file, on or before January 31st, with the Building Commissioner:

§4.11.13.4.1 A copy of the Dennis Board of Health Rental Permit;

§4.11.13.4.2 An affidavit stating that either the principal dwelling or the accessory dwelling unit will be used as the principal residence of the owner; and

§4.11.13.4.3 A lease stating that the leased premises will be leased for a minimum of twelve (12) consecutive months, with no subletting or assigning to occur.

7. **§ 5 (Definitions).** ADD the following language to Section 5 of the Dennis Zoning Definitions.

7.1. Per Section 7 of Chapter 150 and G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00, the existing definition of ADU shall be removed; and

7.2. Per Section 7 of Chapter 150 and G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00, the existing definition of ADU shall be Replaced by the following Definition: ***Accessory Dwelling Units (“ADUs”) By-right Pursuant to G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00, one Protected Use ADU is allowed on a lot in the following Zoning Districts: R-40, R-60, Quivet Neck/Crowe ’s***

Pasture Resource Protection District, RR, LL, GC-II, GC-III, DPVC Area A, and DPVC Area BA Protected Use ADU is defined as a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same Lot as a Principal Dwelling, subject to otherwise applicable dimensional and parking requirements, that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the state building code for safe egress; (ii) is not larger in Gross Floor Area than 1/2 the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller and is proposed to be located on a Lot in a Single-Family Residential Zoning District and no other Accessory Dwelling Unit is located on said Lot. For purposes of this section, Gross Floor Area shall be the sum of the areas of all floors of the building, including basements, cellars, mezzanine and intermediate floored tiers and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding: (i) covered walkways, open roofed-over areas, porches and similar spaces; and (ii) pipe trenches, exterior terraces or steps, chimneys, roof overhands and similar features.

- 7.3. Per Section 10 of Chapter 150 and G.L. c. 40A, § 3, ¶ 11 and 760 CMR 71.00, we need to add the following new definition allowing Lots of a certain age and size, that have been undersized for many decades to be developed with conditions.

New houses proposed on previously non-conforming, non-buildable “remainder” lots, that at the time of recording or endorsement, the lot conformed to then existing requirements of area, frontage, width, yard or depth and the new single-family residential structure constructed on said lot shall not exceed 1,850 square feet of heated living area, shall contain not less than 3 bedrooms and shall not be used as a seasonal home or short-term rental.