

**DRAFT BYLAW CHANGES RE:**

**“BIG HOUSE” BYLAW**

**GUEST HOUSES AND ACCESSORY APARTMENTS**

May 9, 2023. Edited June 29, 2023, Edited November 27, 2023, Edited December 22, 2023

Edited Feb 12, 2024

**Article 2: DEFINITIONS**

**Floor Area  
Section 2.11**

The area of a building or structure determined by adding all horizontal areas of the ~~several floors~~ ~~above grade level~~ **stories** having a height clearance of six (6) feet or more, as measured from the interior faces of the exterior walls.

**Total Living Area  
Section 2.24**

Total Living Area means the aggregate **floor area of the horizontal areas of the above-grade level stories of a building, measured from the interior faces of the exterior walls of the building, without deduction for bathrooms, hallways, stairs, closets, and the thickness of walls, columns or other structural features of all** ~~habitable space, which is generally based on the sum of the exterior dimensions of each above-grade level of a structure~~ but does not include decks or porches, even if roof-covered or enclosed by walls or screening. The measurement includes all Dwellings and Accessory Structures, ~~or portions thereof, that are habitable~~. It also includes indoor swimming pools; indoor tennis, squash, or similar courts; and similar indoor facilities. *Question. Are garages intended to be included in TLA, attached or detached? If not, should there be some limit on area that is excluded, i.e., 500 sqft?*

*Additional questions to that might be considered:*

- *Present bylaw excludes screen porches from TLA. Should these be unlimited in size or should TLA exclude only to some floor area? i.e., West Tisbury excludes area of screen porches up to 300 sqft.*
- *Should TLA of affordable dwelling unit(s) on property be excluded?*
- *Should TLA definition list other floor areas (besides decks and porches) that are not included in TLA even if above-grade level? i.e., mechanical rooms, unfinished attic areas, unconditioned accessory structures smaller than ??? sqft. (West Tisbury exempts structures less than 200sqft.)*

**Accessory Apartment  
Section 2.25**

An "Accessory Apartment" is a separate living area (attached to or detached from the principal dwelling) which is equipped with a kitchen, **one or more** bathroom(s) and a separate entrance and is intended for accessory use to a single-family dwelling, on any sized lot.

**Grade Level  
Section 2.27**

**A reference plane representing the average of the finished ground level adjoining the building at all exterior walls.**

**Basement  
Section 2.28**

A story that is not above grade level. (See "Story above grade level").

### **Story Above Grade Level Section 2.28**

Any story having its finished floor surface entirely above grade level or in which the finished surface of the floor level next above is more than five feet above grade level.

*Above proposed definition of a Story Above Grade Level has a specific cutoff point defining the level next above, and floor area would be accounted accordingly. Should other approaches be considered?*

*One such alternate approach might count a story above grade by the degree it is above grade where it is 100% counted in TLA if entirely above grade or where the finished surface of the floor next above is say 6' above the grade plane, 25% counted if the finished surface of the floor above is between 3' and 4' above grade plane, 50% counted if the finished surface of the floor above is between 4' and 5' above grade plane, and 75% counted if the finished surface of the floor above is between 5' and 6'. The result thereof is a not "all or nothing" approach to defining a basement.*

#### ALTERNATE 1.

Any story having its finished floor surface entirely above grade level or in which the finished surface of the floor level next above is more than six feet above grade level, or 75% of the floor area of any story in which the finished surface of the floor level next above is more than five feet above grade level and less than six feet, or 50% of the floor area of any story in which the finished surface of the floor level next above is more than four feet above grade level and less than five feet. or 25% of the floor area of any story in which the finished surface of the floor level next above is more than three feet above grade level and less than four feet.

*A second alternate approach might count a story above grade by the degree it is above grade level where it is 100% counted in TLA if entirely above grade or where the finished surface of the floor next above is say 6' above the grade plane and partially counted to the degree the floor surface of the floor above falls between 3' and 6' above grade.*

#### ALTERNATE 2.

Any story having its finished floor surface entirely above grade level or in which the finished surface of the floor level next above is more than six feet above grade level, or a percentage of the floor area of any story in which the finished surface of the floor level next above is between three feet and six feet above grade level with 0% counted at three feet above grade level and 100% counted at six feet above grade level (i.e. 50% counted in which the finished floor level next above is four and one half feet above grade level).

## **Article 4: USE REGULATIONS**

### **ACCESSORY USES**

**Section 4.2A** Accessory uses as specified below which are customarily accessory and incidental to a permitted use, subject to the following provisions.

1. GuestHouse, provided that:

- a. The lot on which the principal dwelling and the accessory dwelling are located contains a minimum area of land of (3) acres.
- b. The maximum floor area of the accessory dwelling shall not exceed 800 square feet. Excluded from such limit are open porches and decks, and screen porches of 200 square feet or less in total. An interior stair from the 1<sup>st</sup> floor area to an unfinished, non-habitable basement for the purpose of access to utilities and storage shall be permitted and shall not be included in floor area.

**Article 6: DIMENSIONAL AND DENSITY REQUIREMENTS**

**Section 6.12**

**A. Accessory Apartments**

This section is intended (a) to help provide affordable year-round rental housing opportunities within the context of Chilmark's predominantly single family home character (and to give homeowners an opportunity for supplemental income), and (b) to provide housing for an owner's immediate family members (i.e., children, grandchildren, parents, in-laws) and Caregivers.

One Accessory Apartment (pre-existing or to be constructed) may be allowed by Special Permit and with approval of the Board of Health, subject to compliance with all these Bylaws and to the following conditions:

- 1. Permitted Use: An Accessory Apartment must be either (a) rented as affordable housing (as further set forth herein) or (b) rented or provided free of charge to immediate family members or Caregivers (as further set forth herein). No other occupancy is permitted.
- 2. Requirements for Affordable Housing Apartments:
  - a. The principal dwelling and the Accessory Apartment must be owned by the same party.
  - b. The owner of the property need not be a year-round resident of Chilmark.
  - c. The Accessory Apartment must be rented on a year-round basis to persons eligible to rent affordable housing in Chilmark following basic income certification by DCRHA\*
  - d. The maximum rental rate shall be established annually by the Federal Department of Housing & Urban Development (HUD) and administered by the Dukes County Regional Housing Authority (DCRHA) which will also administer the Accessory Apartment program for those apartments used as affordable housing.

\*Dukes County Regional Housing Authority

- 3. Requirements for Immediate Family Member/Caregiver Apartment
  - a. The principal dwelling and the Accessory Apartment must be owned by the same party.
  - b. The owner of the property must be a year-round resident of Chilmark and must occupy either the principal dwelling or the Accessory Apartment (with the exception of seasonal Caregivers as set forth in 3.e below).

- c. The Accessory Apartment must be rented or occupied on a year-round basis (with the exception of seasonal Caregivers as set forth in 3.e below).
  - d. There is no minimum or maximum rental rate.
  - e. Notwithstanding 3.b and 3.c above (regarding the year-round residency requirement of the property owner and the year round occupancy requirement of the Accessory Apartment), if the owner of the property is not a year-round resident of Chilmark and the Special Permit specifically so provides, the Accessory Apartment may be rented or provided free of charge on less than a year-round basis for an owner's Caregiver while the owner is in residence on the property.
4. Size Restriction: Accessory Apartments (including an Accessory Apartment within an otherwise non-habitable structure such as a garage or barn) shall have a Floor Area not exceeding 1080 square feet (or, if a Guest House would not be permissible on such lot, such Accessory Apartment shall have a Floor Area not exceeding 540 square feet). Excluded from such limits are open porches and decks, and screened porches 250 square feet or less (180 square feet or less on lots where a Guest House would not be permissible). An interior stair from the 1<sup>st</sup> Floor Area to an unfinished, non-habitable basement for the purpose of access to utilities and storage shall be permitted and shall not be included in floor area.

Conversion of Accessory Apartment to Guest House (Accessory Apartment is more than 400 sq.ft.): Any Special Permit for a detached Accessory Apartment (including an Accessory Apartment within an otherwise non-habitable structure such as a garage or barn) of more than 400 square feet shall specify that such Accessory Apartment may not be used other than as affordable rental housing (in accordance with the requirements of the DCRHA) or by an owner's caregiver or immediate family members unless and until such Accessory Apartment is formally approved by the Town as a permissible Guest House pursuant to these Bylaws (including, without limitation, the 5 year waiting period requirement for a Guest House, and Guest House size restrictions).

5. Conversion of Accessory Apartment to Detached Bedroom or Guest House (Accessory Apartment is 400 sq. ft. or less): Any Special Permit for a detached Accessory Apartment (including an Accessory Apartment within an otherwise non-habitable structure such as a garage or barn) of 400 square feet or less shall specify that such Accessory Apartment may not be used other than as affordable rental housing (in accordance with the requirements of the DCRHA) or by an owner's Caregiver or immediate family members until either (i) the kitchen is removed and such structure qualifies as a Detached Bedroom or (ii) the structure is formally approved by the Town as a permissible Guest House pursuant to these Bylaws (including, without limitation, the 5 year waiting period requirement for a Guest House).
6. Both Guest House & Accessory Apartment Permissible: For the avoidance of doubt and subject to the other provisions of these Bylaws, an owner of a property shall not be precluded from having both an Accessory Apartment and a Guest House. No property may have more than one Guest House.