

**TOWN OF HARWICH  
SPECIAL TOWN MEETING  
MAY 7, 2013**

ACCESSORY APARTMENTS

ARTICLE 12 To see if the Town will vote to amend the Code of the Town of Harwich, Chapter 325 Zoning as set forth below and to act fully thereon. By request of the Planning Board.

*Explanation: Standards for accessory apartments currently occur in three separate locations within the zoning by-law. These amendments combine all standards into one section under Special Permits. Specific changes include requirements for ownership and rental of units, septic systems, minimum lot size, entry location, and appearance of the property. A new provision is added to require a special permit for residential accessory buildings with bedrooms.*

**FINANCE COMMITTEE RECOMMENDS THIS ARTICLE BE ACCEPTED AND ADOPTED. VOTE: YES-4, NO-0, ABSTAIN-1.**

Underlined words indicate language proposed for insertion  
*Italicized Words with Strike Through* indicate language proposed for deletion

Revise ARTICLE II, Section 325-2, Definitions – DWELLING, ONE-FAMILY WITH ACCESSORY APARTMENT and 325 Attachment Tables 1 and 2. Delete ARTICLE IV, Section 325-7.B, and ARTICLE X, Sections 325-51.H and 325-51.I, Special Permits, in their entirety. Add new sections under ARTICLES V and X to read as follows:

ARTICLE II. Definitions. [revised]

~~*DWELLING, ONE FAMILY WITH ACCESSORY APARTMENT – An owner occupied residential dwelling containing a principal dwelling unit, either attached or detached, one of which has a net floor area not exceeding ½ of the net floor area of the principal dwelling unit but in no event more than 900 square feet and includes not more than two (2) bedrooms, a kitchen, living room and bath which are separate from and not used in common with the principal dwelling. The principal dwelling and the detached accessory apartment must share a common septic system. For the purpose of this definition, such dwelling shall be deemed to be owner occupied if either dwelling unit is occupied by the property owner of record on a year round basis, except for bona fide temporary absence during which the owner’s unit is not rented.*~~

DWELLING, SINGLE-FAMILY WITH ACCESSORY APARTMENT – A single-family dwelling containing a principal dwelling unit and a separate accessory apartment, either attached or detached. The apartment shall contain a kitchen and bathroom which are separate from and not used in common with the principal dwelling unit.

ARTICLE V. Use Regulations [new]

325-14. Supplemental regulations.

Q. A residential accessory building that contains bedrooms is subject to special permit review pursuant to Section 325-51. Residential accessory buildings without bedrooms are not subject to special permit review.

ARTICLE X. Administration and Enforcement. [new]

325-51. Special permits.

H. Single-family Dwelling with Accessory Apartment

(1) Purpose. The intent of permitting accessory apartments is to:

- (a) Increase the number of small dwelling units available for rent in town;
- (b) Increase the range of choice of housing accommodations;
- (c) Encourage greater diversity of population with particular attention to young adults and senior citizens; and
- (d) Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the town's single-family neighborhoods.

(2) Definitions.

- (a) "Owner" shall be one (1) or more individuals holding title to the property.

(3) Criteria for Special Permit Approval

Special permits for single-family dwellings with an accessory apartment, either attached or detached, may be granted upon determination by the Planning Board that the following criteria have been met:

- (a) Only one accessory apartment is permitted for each principal dwelling unit.
- (b) The accessory apartment may not be held in separate ownership from the principal use.
- (c) The owner must reside in either the principal dwelling unit or accessory apartment for at least a portion of the year. Only one of the principal dwelling unit or accessory apartment may be rented at any given time.
- (d) The accessory apartment shall have a net floor area not exceeding ½ of the net floor area of the principal dwelling unit and not more than 900 square feet.
- (e) The accessory apartment shall have not more than two bedrooms.
- (f) At least one (1) off-street parking space shall be provided for the accessory dwelling unit.
- (g) The minimum lot area required for a parcel to be eligible for a special permit to allow an accessory apartment shall not be less than 15,000 square feet if the parcel is situated in an RH-1, CV, CH-1, MRL or MRL-1 District; 20,000 square feet if situated in an RL, RM or RR District; and 40,000 square feet if situated in a Water Resource (WR) Overlay District.
- (h) The accessory apartment shall be designed so that, to the degree reasonably feasible, the appearance of the property remains that of a single family property with matching materials, colors, window styles and roof design for

one structure, if the apartment is attached, or for both structures, if the apartment is detached.

- (i) The principal dwelling unit and accessory apartment shall meet all wastewater treatment requirements for the combined number of bedrooms.
  - (j) The proposed use shall not create traffic hazards or volume greater than the capacity of the streets affected.
  - (k) The proposed use shall not exceed the building or site coverage for the zoning district.
  - (l) If an addition is to be built for the proposed use, the addition shall be set back from front, side and rear lot lines the distance required in the zoning district for new construction.
- (4) The applicant shall record with the Registry of Deeds for Barnstable County a certified copy of the Special Permit decision and commence the use allowed under the Special permit decision within two years of the Special Permit decision taking final effect or the rights and benefits under the Special Permit decision shall lapse.
- (5) **Transfer of Ownership**  
The provisions of the Special Permit may be transferred with ownership of the property provided the provisions of this section and all other provisions of the Zoning code of the Town of Harwich and the State Building Code are met and the Planning Department has approved a transfer for the Special Permit. The new owner also may request a Planning Board Certification for the accessory apartment. To obtain such certification, the owner shall submit a written request with a statement that the conditions at the time of the original Special Permit approval remain unchanged and with a certification of ownership. The Planning Board Certification shall be recorded at the Registry of Deeds.
- (6) A final determination that the owner failed to comply with these provisions or the termination of occupancy by the owner of the subject property shall be evidence that the rights and benefits conferred under the Special Permit were abandoned or otherwise surrendered and discontinued by the owner and all such rights and benefits shall lapse and the elements that make the accessory apartment a separate dwelling unit shall be removed from the property within 90 days of said final determination, with the owner to comply with all requirements of the State Building Code in removing the elements.

Table 1 - Use Regulations [revised]

Use	R R	R L	R M	R H -1	R H -2	R H -3	C V	C H -1	C H -2	IL	M R L	M RL -1	WR	
Paragraph I – Residential Uses														
1a	Accessory building, residential – without bedrooms	P	P	P	P	P	P	P	P	--	--	P	P	P
1b	Accessory building, residential – with bedrooms	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	--	--	<u>S</u>	<u>S</u>	<u>S</u>
10	Single-family dwelling with accessory apartment (325-51H <del>and I</del> )	S	S	S	S	--	--	S	S	--	--	S	S	S

Table 2, Area Regulations [revised]

District	Use	Minimum Required				
		Lot Area (square feet)	Lot Frontage (contiguous feet)	Front (feet)	Side (feet)	Rear (feet)
WR	Dwelling, single-family with accessory apartment	<del>60,000</del> <u>40,000</u>	Same as underlying district			

**MOTION:** (Albert Patterson-Chairman, Finance Committee) I move that this article be accepted and adopted as printed in the Warrant with the following recommended changes:

Section 325-51.H.(3)(c) as noted in the Warrant, shall be revised to read as follows:  
Only one of the principal dwelling or accessory apartment may be rented at any given time.

Section 325-51.H.(4) as noted in the Warrant, shall be revised to read as follows:  
The applicant shall record with the Registry of Deeds for Barnstable County a certified copy of the Special Permit decision and the special permit shall lapse if it is not so recorded and if it is not duly exercised within two years as provided for under G.L.c.40A, §9.

Section 325-51.H.(6) as noted in the Warrant, shall be revised to read as follows:  
A final determination that the owner failed to comply with these provisions or the termination of occupancy by the owner of the subject property shall be evidence that the

rights and benefits conferred under the Special Permit were abandoned or otherwise surrendered and discontinued by the owner and all such rights and benefits shall lapse and the elements that make the accessory apartment a separate dwelling unit shall be removed from the property within 90 days of said final determination, with the owner to comply with all requirements of the State Building Code and Town Zoning in removing elements determined to be unpermitted.

Duly seconded

At this time the Matthew F. McCaffery read the report of the Planning Board as follows:

To: Board of Selectmen  
From: Matthew F. McCaffery, Chair  
Date: May 3, 2013

RE: *Planning Board Report on Special Town Meeting Article  
Accessory Apartments (#12)*

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At a duly scheduled and advertised Planning Board public meeting held on Tuesday April 9, 2013, members of the public and parties of interest gave testimony on the proposed article amendments.

Following public deliberation and Town interdepartmental reviews, the Planning Board voted unanimously in favor of forwarding the articles to the Board of Selectmen.

Following a further review of the Article#12 for Accessory Apartments by Town Counsel, the Planning Board, on Tuesday, April 23, 2013, at its regularly scheduled meeting, voted to amend the article as requested. A copy of the amended language is attached.

### **Article 12: Accessory Apartments**

*Italicized Words with Strikethrough* indicate language proposed for deletion.

325-51.H.(3)(c)

~~The owner must reside in either the principal dwelling or accessory apartment for at least a portion of the year.~~ Only one of the principal dwelling or accessory apartment may be rented at any given time.

325-51.H.(4)

The applicant shall record with the Registry of Deeds for Barnstable County a certified copy of the Special Permit decision and ~~commence the use allowed under the Special Permit decision within two years of the Special Permit decision taking final effect or the rights and benefits under the Special Permit decision shall lapse~~ the special permit shall lapse if it is not so recorded and if it is not duly exercised within two years as provided for under G.L.c.40A, §9.

325-51.H.(6)

A final determination that the owner failed to comply with these provisions or the termination of occupancy by the owner of the subject property shall be evidence that the rights and benefits conferred under the Special Permit were abandoned or otherwise surrendered and discontinued by the owner and all such rights and benefits shall lapse and the elements that make the accessory apartment a separate dwelling unit shall be removed from the property within 90 days of said final determination, with the owner to comply with all requirements of the State Building Code and Town Zoning in removing ~~the~~ elements determined to be unpermitted.

**ACTION:** This motion required a 2/3 majority vote to pass, a standing count was taken YES 85 NO 36, the motion passed.

A true copy

Attest: \_\_\_\_\_  
Anita N. Doucette, CMMC/MMC  
Harwich Town Clerk

**TOWN OF HARWICH  
SPECIAL TOWN MEETING  
MAY 7, 2013**

PANHANDLE LOTS AND SHAPE NUMBERS

ARTICLE 13 To see if the Town will vote to amend the Code of the Town of Harwich, Chapter 325 Zoning as set forth below and to act fully thereon. By request of the Planning Board.

**FINANCE COMMITTEE RECOMMENDS THIS ARTICLE BE ACCEPTED AND ADOPTED. VOTE: YES-5, NO-0.**

*Explanation: Panhandle lots are currently permitted in nearby Cape Cod towns such as Brewster, Chatham, Dennis and Orleans. They allow use of rear land with limited access that would otherwise require layout of new roads for adequate access. The intent of this by-law is to allow creation of a limited number of such lots while minimizing infrastructure costs. Standards for panhandle lots include minimum width and frontage, maximum length, adequacy of driveway design, and number of adjacent panhandle lots. A related action is replacement of lot circle requirements with a maximum shape number requirement. An attached illustration provides a clearer indication of how shape numbers are calculated.*

Underlined words indicate language proposed for insertion  
~~*Italicized Words with Strike Through*~~ indicate language proposed for deletion

Amend Chapter 325 Zoning by adding two new definitions under Article II. Definitions and by amending and adding language to subsections A. and Q. of Section 325-18 Additional Regulations under Article VI. Area, Height and Bulk Regulations as set forth below:

ARTICLE II: Definitions

“LOT, PANHANDLE” means a lot approved by the Planning Board under the Subdivision Control Law that is designed to provide adequate access even though the lot has less than the required frontage on a public or private way. Standards for panhandle lots are provided in Section 325-18.Q.

“SHAPE NUMBER” – The numerical value resulting from division of the square of the perimeter of a lot by the area in square feet thereof.

ARTICLE VI: Area, Height and Bulk Regulations

Section 325-18. Additional Regulations

A. The required minimum width of any lot hereafter laid out or created, measured along the front yard setback line, shall not be less than 80% of the required minimum lot frontage. In order to comply with the minimum square foot requirement, any lot hereafter created for building purposes must be a closed plot of land having a definite area and perimeter and having a shape number not exceeding the numerical value of 22,

except that a lot may have a shape number larger than 22 provided that the site intended for building, is contained within a portion of said lot, which said portion meets the zoning requirements of the area in which it is located and has a shape number not exceeding 22. The lot shape number shall be obtained by dividing the square of the lot perimeter (P), measured in feet, by the area of the lot (A), measured in square feet (i.e.:  $P^2 \div A \leq 22$ ).

*All lots hereafter created for building purposes shall be shaped so that they can contain either one circle of a diameter not less than the frontage requirement of the zoning district within which the lot is located or two circles tangent to each other, each of a diameter of not less than 70% of the frontage requirement of the zoning district within which the lot is located. In either case, one circle must be tangent to the lot frontage. The diameter of circles in cluster subdivision lots may be as small as the minimum allowable frontage for cluster lots.*

Q. Panhandle lots may be approved by the Planning Board under the Subdivision Control Law provided that the following conditions are met:

- (1) Lot frontage and lot width within the panhandle portion shall be a minimum of 35 feet.
- (2) The length of the panhandle portion of a lot shall be a maximum of 300 feet.
- (3) Suitable access by a driveway to such lot is provided within the panhandle and, in the opinion of the Board, the access is wide enough and otherwise satisfactory for a driveway.
- (4) All panhandle lots shall meet the shape number requirements of Section 325-18.A.
- (5) No panhandle portion of any lot may be contiguous to another panhandle portion of a lot at the street line.

LOT 2  
 48,875 SQ. FT. ±  
 1.12 ACRES ±  
 1421.20 PERIMETER  
 $150.00' + 552.00' + 50.00' + 52.24' + 246.98' + 115.00' + 252.00' = 1,421.20'$   
 $1,421.20'^2 / 48,875 = 41.50$  (SHAPE NUMBER)

LOT 2 (MODIFIED)  
 40,000 SQ. FT. ±  
 0.92 ACRES ±  
 929.72 PERIMETER  
 $150.00' + 314.86' + 35.00' + 62.86' + 115.00' + 252.00' = 929.72'$   
 $929.72'^2 / 40,000 = 21.61$  (SHAPE NUMBER)

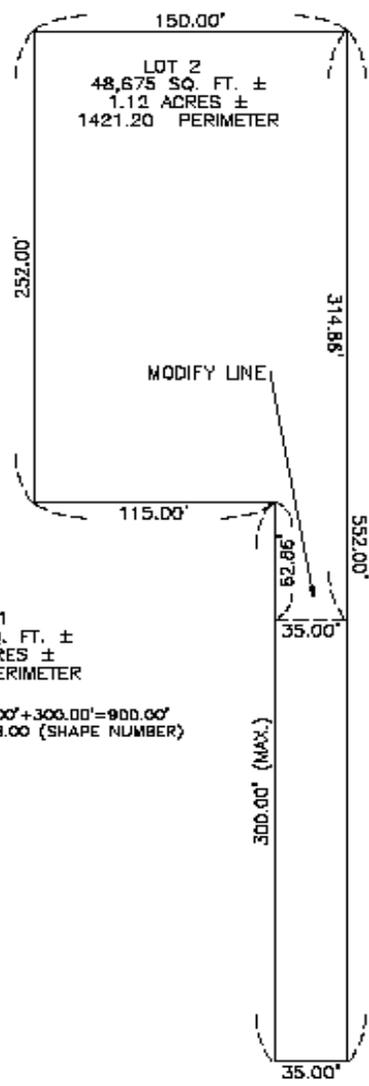
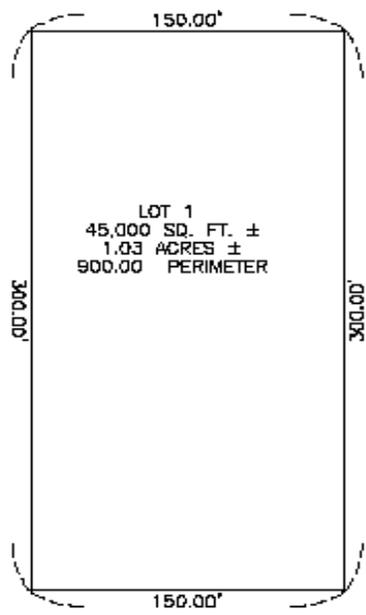


FIGURE # (NEW)

**MOTION:** (Albert Patterson-Chairman, Finance Committee) I move that this article be accepted and adopted. Duly seconded

At this time Matthew F. MaCaffery read the report of the Planning Board as follows:

To: Board of Selectmen  
From: Matthew F. McCaffery, Chair  
Date: May 3, 2013

RE: *Planning Board Report on Special Town Meeting Article  
Panhandle Lots and Shape Numbers (#13)*

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At a duly scheduled and advertised Planning Board public meeting held on Tuesday April 9, 2013, members of the public and parties of interest gave testimony on the proposed article amendments.

Following public deliberation and Town interdepartmental reviews, the Planning Board voted unanimously in favor of forwarding the articles to the Board of Selectmen.

**Article 13: Panhandle Lots and Shape Numbers**

None

**ACTION:** This motion required a 2/3 majority vote to pass, it was ruled to have received the necessary 2/3 majority vote, the motion passed.

A true copy

Attest: \_\_\_\_\_  
Anita N. Doucette, CMMC/MMC  
Harwich Town Clerk