

PLANNING BOARD REPORT YARMOUTH, MAINE

109 Sunset Point Road, Yarmouth, Maine Final Review for Shoreland Zone Permit Chapter 701 Article IV. Section R. Maria Atkins, Applicant Map 24 Lot 53; LDR/SOD/RP Prepared by: Erin Zwirko, Director of Planning & Development Report Date: June 16, 2022; Planning Board Meeting: June 22, 2022

I. INTRODUCTION

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The applicant, Maria Atkins, proposes to demolish an existing cottage and replace it with a single-family permanent residence at 109 Sunset Point Road (Map 24 Lot 53). The property is located in the Low Density Residential district (LDR), the Shoreland Overlay District (SOD), and the Resource Protection district (RP). This is a small nonconforming lot of 0.16 acres in the LDR zone, which has a 2-acre minimum lot size, and 77 ft of ocean frontage, which is below the 150 ft minimum shore frontage for a Tidal Area. The existing two-story building is non-conforming under all setback, lot coverage and height requirements. For the meeting on June 22, 2022, the application is presented for final review. Concept review occurred on May 11, 2022.

This application was heard by the Planning Board numerous times in 2017. At the time, residents, Town staff and the Board expressed concerns with tree removal, soil stabilization on the shoreland, blasting of ledge/bedrock, and the construction impacts on adjacent homes in close proximity. In 2017, the applicant also requested a height variance to allow the proposed residence to be 26 ft 11.5 in, which would've been 5 ft above current structure, due to flood plain elevations constricting the basement design.

The applicant has made several changes in the building and site design to bring it closer to conforming where possible and to resolve the concerns from the Town and neighbors in 2017. The existing residential structure will be replaced with a new two-story home with a basement, that will be no higher than the existing height as allowed by the ordinance. The footprint of the new home will be increased from 1,603 sq ft to 1,688 sq ft, which is an expansion of 5.3%; an expansion of 30% is allowed under Article IV.R.5.a.(1).c.i,

MINIMUM DIMENSIONAL REQUIREMENTS			
ZONE: LOW DENSITY RESIDENTIAL	REQUIRED	EXISTING	PROPOSED
MINIMUM LOT SIZE	2 ACRES	7,247 S.F.	7,247 S.F.
LOT WOTH	200'	80'	80"
FRONT YARD SETBACK (AVG.)	40'	14'	14.5'
SIDE YARD SETBACK	20'	8.61	8.7
REAR YARD SETBACK	40'	2.38	8'

REQUIRED SETBACKS		
TYPE OF SETBACK	DISTANCE	
NATURAL RESOURCE PROTECTION ACT (NRPA) 25'	25*	
NRPA 75	75'	
100 YEAR FLOOD	5	

Figure 1. Dimensions & Setbacks (Provided by Applicant)

Figure 2. Aerial Map of Project Location



Figure 3. FEMA Flood Hazard Map (Preliminary 2017 FIRM)





Figure 5. Proposed Site Plan



Figure 6. South Elevation







Figure 8. North Elevation



Figure 9. East Elevation



II. REQUIRED REVIEWS

Applicant's Proposal	Applicable Standards
Newly constructed and expanded non-conforming Single-Family Residence on a non-conforming parcel	Shoreland Overlay District Permit Review Chapter 701 Article IV.R.5.a.(1).c.i,
Removal and rebuilding of an existing residence, resulting in a removal of greater than 50% of the market value of the structure prior to the rebuilding.	Chapter 701 Article IV. R. a (3) and (4) Reconstruction or Replacement, Relocation Assessment
Granite Stairway to Shore	Chapter 701 Article IV. R. 7.c.5
Removal of two trees	Shoreland Overlay District Standards, Section k and Section I

Eleven notices were sent to abutting area residents. A notice also appeared in the June 16, 2022, edition of *The Forecaster*. No written comments have been received as of writing this report.

SUBJECT	DATA
Existing Zoning	LDR/Shoreland Overlay District
Existing Use	Single Family Residence
Proposed Use	Single Family Residence
Parcel Size	0.23 acres
Lot Size	7,247 Sq ft
Property shoreline	77 Ft
Stairs Dimension	4 feet wide by 20 feet long
Total area of direct impact	3,042 Sq ft
Total Indirect Impact	4,205 Sq ft
Estimated cost of the project	\$650,000

III. PROJECT DATA

Uses in Vicinity: Permanent and seasonal Single-Family Homes

IV. PROPOSED DEVELOPMENT

As a nonconforming structure, the development is subject to the requirements of Shoreline regulations including Chapter 701, Zoning, Article IV.R.5.a.(1).c.i, which allows such structures to be expanded to 1,000 sf or 30% larger than the existing footprint up to a height of 20 ft or the height of the existing structure, whichever is greater, and Article IV.R.a.(3) and (4), which requires replacement of nonconforming structures that exceed 50% of the value of the existing structure to demonstrate that the new structure has been relocated to meet required setbacks to the greatest practical extent. Replacement structures cannot reduce setbacks from the water below the existing nonconforming distance from the water, although expansion that equals the nonconforming setback is allowed. In this case, the existing structure is nonconforming to setbacks on two sides (the west and rear sides), so the new structure cannot be closer to the water than the closest existing portion of the existing structure on either side.

The existing residence and garage, constructed in 1899, will be demolished and a new two-story house with a full basement will be constructed. The existing house and garage are the only structures on the property. The existing structure has a crawl space and basement area for a small portion of its footprint. There are residential structures on abutting properties in very close proximity. The proposed residence with an attached garage will be placed in roughly the same location as the existing, but the footprint will be expanded by 5.3% from 1,603 sq ft to 1,688 sq ft.

The proposed residence will be located within the setbacks of the existing structure, relative to the property lines. In comparison to the 2017 proposal, the residence has changed the orientation slightly, making a slightly larger structural footprint but also increasing the setbacks from the ocean and abutters.

The revised design for the house also allowed for a small reduction of impervious surfaces on the lot, from 3,142 sq ft (43%) to 3,033 sq ft (42%). With the exception of the driveway and the structure, the property is grass-covered with some trees along the shoreline boundary. A large oak tree that was previously slated to be removed will now be preserved. Two trees are proposed for removal: a 2-inch locust that has been "over topped by larger trees" and damaged, and a 17-inch locust tree that is deemed "hazardous" and is approximately 10 ft from the proposed home site. A Report and Planting Plan was provided with recommendations to replace these damaged trees with more salt tolerant, hardy, native species. Four new trees will be planted.

The project also includes granite steps on the west side shore to access the beach area, going from elevation 17.5 to elevation 7.5 over a 20-foot horizontal distance. Stairs are allowed within the Shoreland setback under Article IV.R.7.c.5, with a maximum width of four ft. The materials submitted with the final review confirm that the stairs will be four feet

wide over 20 feet in length. The property is subject to an access right-of-way and driveway benefitting the Jackson property to the rear.

The new house will utilize the existing public sewer and water services that extend to the end of Sunset Point Road. Existing site grades will be minimally impacted, and the application includes a Site Plan that illustrate erosion control measures.

As noted in the concept review, the drawings showed measurements for the 75-foot setback from the normal highwater line. The revised plans illustrate the setbacks from the astronomical high tide line. The ocean setbacks measuring from the highest annual tide for the new home have increased from 22.3 ft to 26.4 ft on the southwesterly side and from 45 ft to 45.1 ft on the northwesterly side. Setbacks from the ocean on the southeasterly side are still more than 75 ft, now at 85 ft.

V. PUBLIC COMMENT

No public comments have been received relative to the final submittal.

One public comment was received previously with the concept review regarding the construction phase of the project and the hours of work, worker parking, impediments to access for neighbors, noise and smell, damage to the road, and impacts on drainage. The letter points to minimal access, limited turn arounds, and scant public parking on this street. These comments echo concerns voiced in 2017 regarding the congested area at the end of Sunset Point and how that will be managed with the demolition and construction of a new residence.

Staff Comment: The applicant's contractor, Ben Trout of Trademark, Inc., previously provided a Construction Plan for the project that gives directions for the staging area, use of heavy equipment vehicles and workers' transportation. The document addresses some of the concerns expressed by nearby residents. Conditions of approval include maintaining erosion and sedimentation control measures around the construction zone to protect abutting properties and resources from erosion, sediments, and other materials from leaving the project site, attending a pre-construction meeting (standard condition of approval), utilizing methods other than blasting to aid in construction, and maintaining only two parking spaces for construction vehicles and requiring offsite parking for others during construction. Compliance with seasonal road postings is required for all heavy equipment in Yarmouth from February through April typically.

VI. RIGHT, TITLE AND INTEREST AND FINANCIAL/TECHNICAL CAPACITY

a. Right, Title, and Interest

The applicant has submitted information regarding their work to clarify easements rights and the property lines since 2017. The current survey plan includes drawing notes that "fixes a call by the shore" to the high tide or the normal water line. This notation extends the property lines out to the normal high-water line. The representative from Stonybook Land Use Inc. has confirmed that the deed lines extend to the high-water line of the ocean, which was affirmed by the firm of Eaton Peabody that the deeds in the chain of title for the property consistently describe the property as being bounded "by the shore". It appears that this is an appropriate application.

b. Easement Agreements

Clarification on easement rights was requested when the application was originally heard in 2017. Since then, the applicant has coordinated with the Jackson Family, located at 105 Sunset Point Road, and with Amy Sinclair and Mark Turkel, located at 103 Sunset Point Road, to provide access rights to the beach.

The applicant has provided signed easements and Easement Plans with neighbors from September and November of 2021. A Driveway Easement between the applicant and the Jacksons for the use of vehicular and pedestrian purposes to the shared driveway. This document also grants pedestrian easement along the southerly wall of the

existing dwelling due to the closeness of these properties.

A Pedestrian Easement Agreement documents agreements with the applicant, Maria Atkins, Amy M. Sinclair and Mark T. Turkey at 103 Sunset Point Road, and the Jackson's (Ann C. Jackson, Charles M. Jackson, David E. Jackson, and Doris M. Jackson) residence at 105 Sunset Point Road, for vehicular and pedestrian purposes of a Shared Easement Area.

A Pedestrian Easement Agreement between the applicant and Amy M. Sinclair and Mark T. Turkel of 103 Sunset Point Road also provides a common walking path to the ocean by Ms. Atkins and Ms. Sinclair and Mr. Turkel.

c. Financial and Technical Capacity

The estimated cost of the project is \$650,000.

Construction is provided by Ben Trout – Trademark, Inc. of 380 Cottage Road, South Portland, Maine. Michael F. Grotto of Stonybrook Land Use, Inc. is providing land use consulting, environmental permitting, and site assessment. The project team also includes Ryan Senatore Architecture (RSA) for building design and Acorn Engineering (Acorn) for site plans.

VII. ZONING ASSESSMENT

Shoreland Zoning Chapter 701 Article IV.R.5.a.(1).c.i, Expansion

(1) Expansion

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream or ARTICLE IV CHAPTER 701 112 of 225 wetland setback requirement contained in Article IV R. 7 (c) (1) . A non-conforming Structure may be added to or expanded after obtaining a permit from the Permitting Authority, if the standards of this subsection are met, and if such Addition or expansion does not increase the non-conformity of the Structure.

(a.) Expansion of any portion of a structure within 25 ft of the normal high-water line of a water body, tributary stream or upland edge of a wetland is prohibited, even if the expansion will not increase non-conformity with the water body, tributary stream, or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.

Staff Comment: The plans originally submitted with the concept application measured the ocean setbacks from normal high water, where the Town requires it from the highest annual tide. When measuring from the highest annual tide as shown with the final submittal, ocean setbacks for the new home have increased from 22.3 ft to 26.4 ft on the southwesterly side and from 45 ft to 45.1 ft on the northwesterly side. Setbacks from the ocean on the southeasterly side are still more than 75 ft, now at 85 ft when measuring from the highest annual tide.

(b.) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 ft from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Article IV.R, 5 (a).

(i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 sq ft or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 ft or the height of the existing structure, whichever is greater.

Staff Comment: According to the Site Plan, the two-story residence has a proposed structural footprint increase from 1,603 sq ft to 1,688 sq ft, which is an increase of 5.3%. The expansion is not greater than 800 ft, nor is it greater than the 30% maximum.

The designs for the residence set the proposed height no greater than the existing residence height. Site surveyors determined that the existing height is 23.36 ft. The proposed residence is set at a grade along the Jackson lot at elevation 17.7 and the proposed roof peak will remain at elevation 41.0. The applicant states that grades around the structure have been adjusted.

A condition of approval is to have a surveyor lay out the foundation in the field.

Shoreland Zoning Article IV Section R.5.a(3), Relocation – Does Structure Meet Setback to the Greatest Practical Extent

(3.) Relocation

(a.) A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Permitting Authority, and that the relocation does not decrease the structure's setback from the Water Body, Tributary Stream, or Upland Edge of a Wetland.

(b.) In determining whether the Structure relocation meets the setback requirements to the greatest practical extent the Permitting Authority shall consider:

i. the size of the lot;

Applicant's Response: Under existing conditions, the parcel is non-conforming under lot size and shore frontage requirements for the LDR district. The building is non-conforming under all setback requirements, lot coverage, and height requirements.

Staff Comment: The applicant has clearly demonstrated a willingness to revise the designs of the residence to overcome the challenges of the nonconformities of this lot by proposing a more compact design that only increases the footprint from 1,603 sq ft to 1,688 sq ft, an increase of 85 ft (or 5.3% larger) when the ordinance allows for 800 ft (or 30% larger). The proposed residence is predominantly located within the footprint of the existing structure and the revised designs enabled small increases in the existing non-conforming setbacks from abutters: the Jackson lot (from 2.8 ft to 8 ft), the Sinclair/Turkel lot (from 8.61 ft to 8.7 ft) and the Bicknell lot (14 ft to 14.5 ft).

ii. the slope of the land;

Applicant's Response: Proposed grades around the structure have been adjusted but are very similar to the original grades based on our site surveys.

Staff Comment: The top of the property is fairly flat, with a steep slope to the shore at the rear of the residence. The project also includes a granite steps on the west side shore to access the beach area, going from elevation 19 to elevation 7 over a 20-foot horizontal distance. Stairs are allowed within the Shoreland setback under Article IV.R.7.c.5, with a maximum width of four ft. The materials submitted with the final review confirm that the stairs will be four feet wide over 20 feet in length. A proposed shared pedestrian easement between the applicant and neighbors (the Jackson and the Sinclair/Turkels) provides access to the shoreline from the northside of the house where the slope is more gradual.

iii. the potential for soil erosion;

Applicant's Response: Acorn supervised test borings by Maine Drilling and Blasting in May of 2018. The boring locations are shown on the project plans. All holes were drilled to a minimum of 9' below ground surface. Bedrock was not encountered in any of the borings. Based on these results, blasting will not be required. The Acorn plan set also includes full details to construct the site improvements with erosion controls that will be required during construction.

Staff Comment: The site plan illustrates erosion control measures for the shoreline and drawing notes include details on a stabilized construction entrance to prevent soil and stormwater runoff. The Town Engineer noted that as the applicant has included an acceptable site-specific erosion and sedimentation control (ESC) plan for the project and dictated that they will be installed prior to the disturbance of vegetation.

Determining that blasting is not required addresses concerns that were voiced during the 2017 review. The applicant has agreed that no blasting would be required for the reconstruction of the structure or any other site improvements. This is recommended as a condition of approval.

iv. the location of other structures on the property and on adjacent properties;

Applicant's Response: In 2017 the applicant stated that "The existing house and garage are the only structures on the property; these will be removed to construct the proposed structure. There are adjacent structures on adjacent properties as shown on the survey plan provided."

Staff Comment: The current revised proposal shows increases of the physical space between the adjacent properties and formalizes pedestrian and vehicular access in these tight constraints.

v. the location of the septic system and other on-site soils suitable for septic systems, (provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules if a subsurface disposal system is being or is to be used;)

Applicant's Response: Existing Town water and sewer services will be protected and reused to service the new home.

Staff Comment: No concerns.

vi. the physical condition and type of foundation present, if any;

Applicant's Response: In 2017 the applicant stated that, "the existing building has a crawl space and basement area for a small portion of its footprint, this foundation is a mix of materials (concrete and block) and is not in great shape." The basement crawl space will be rebuilt. Other portions of the residence will be slab on grade.

Staff Comment: No concerns.

vii. and the type and amount of vegetation to be removed to accomplish the relocation.

Applicant's Response: To construct the new building, two trees will need to be removed. A 17-inch Locust tree will be removed because it is a hazard and located too close to the building. A 2-inch Locust will be removed to allow construction of the proposed water access. As described in the JAI Tree Replacement Letter, these trees will be replaced with four new trees as shown on the Acorn site plans.

Staff Comment: The applicant has limited removal of vegetation with the RPD to only what is necessary for

construction and already damaged. The replanting plan includes native, salt-tolerant plants including two red maples, 1 red oak, and 1 white spruce. The Tree Advisory Committee recommends substituting a swamp white oak for the red oak, as the white oak is more resistant to oak wilt, a destructive fungal disease and one that requires ongoing maintenance to protect trees. It is recommended that a condition of approval be to substitute the swamp white oak for the red oak.

A large 32-inch oak tree will remain on the property. The applicant indicates that fencing will be installed to protect this tree. The JAI letter regarding trees on the property indicates that the travel over the root system with heavy equipment should be avoid. Crane matts should be used to avoid soil compaction and root damage, and a detail was submitted with the final materials.

The Tree Advisory Committee recommends best practices to protect the oak tree that will remain on site as this species is sensitive to root distribution. The Committee recommends that a protective fence be erected on the perimeter of the tree's critical root zone, ideally at the drop line or at least at a distance equal to one foot for every inch of diameter a breast height. At a 32-inch DBH tree, the fence would need to be installed at a radius of 32 feet from the trunk. Due to the constrained nature of the site and the home construction, this does not seem feasible. However, as a condition of approval the other recommendations of the Tree Advisory Committee should be considered including watering and fertilizing the root area and placing a thick layer of mulch in the area as well as utilizing crane mats for heavy equipment and avoiding any other lighter activities in the area such as storage, foot traffic, and other hazards.

Shoreland Zoning Article IV Section R.5.a (4), Reconstruction or Replacement,

(4.) Reconstruction or Replacement

(a.) Any non-conforming structure which is located less than the required setback from the Normal High-Water line of a Water Body, Tributary Stream or Upland Edge of a Wetland and which is wholly or partially removed, damaged or destroyed regardless of the cause, by more than 50% of the market value of the Structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit from the Planning Board is obtained within eighteen (18) months of the date of said damage, destruction or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with Article IV.R.5.a.(3) of this Ordinance. In no case shall a Structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement Structure is less than the required setback it shall not be any larger than the original Structure, except as allowed pursuant to Section IV.R.6.a(1) above, as determined by the non-conforming Footprint of the reconstructed or replaced Structure at its new location. If the total amount of Footprint of the original Structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed Structure shall be replaced or reconstructed at less than the setback requirement for a new Structure. When it is necessary to remove Vegetation in order to replace or reconstruct a Structure, Vegetation shall be replanted in accordance with section IV.R.5.a(3) of this Ordinance.

Staff Comment: The applicant has limited removal of vegetation with the SOD and RPD to only what is necessary for construction and already damaged. The applicant proposes a replanting plan with native, salt-tolerant plants (as shown in the application.) Only two trees will be removed and the applicant will replace with four new, native trees. The plan is to replace the 2-inch locust with a 2-inch caliper White spruce (Picea gluca). The 17-inch locust will be replaced with a one 1-inch caliper Red oak (Quercus rubra) and two 1-inch caliper Red Maples (Acer rubrum). As noted above, the Tree Advisory Committee recommends substituting a swamp white oak for the red oak.

The letter and Planting Plan from Jones Associates provided in the application also indicates that care will be taken during the construction process to avoid mature tree roots, such as the oak tree on the southerly side. A tree protection detail was provided. Recommendations from the Tree Advisory Committee are suggested as conditions of approval.

VIII. SHORELAND PERMIT REVIEW

As the Planning Board is the Permitting Authority, it shall hold a public hearing in accordance with Chapter 702 Article I.E. Notification, and prior to Planning Board rendering a decision, it shall consider the following criteria:

1. Will maintain safe and healthful conditions;

Staff Comment: The new home will maintain safe and healthful conditions and will be required to meet all building code requirements. The Public Works Director Erik Street notes in his memo that Sunset Point Road is in poor condition and a water main and pavement rehabilitation project are planned for 2022, dependent on the Yarmouth Water District's schedule. As the permitting for a new home proceeds and the Town and Water District projects develop, the applicant will need to stay in close contact to ensure that there is coordination between contractors.

The DPW Director recommends that the finished driveway end at their property line and the apron be paved the rest of the way to the street. If bricks or other pavers are placed within the Town right of way, the applicant does so at her own risk. The Town is not responsible for any damage as noted by the Director. The revised site plans incorporate a 6-foot wide paved apron between the edge of the street and the pavers.

His additional comments that contractors and vendors are aware of and abide by the local speed limit and parking plan. The DPW Director also reminds the applicant about compliance with the seasonal road posting requirements.

The applicant will also need to comply with the requirements of the Fire Chief per the National Fire Protection Standards and other local municipal ordinances as outlined in his memo.

2. Will not result in water pollution, erosion, or sedimentation to surface waters;

Staff Comment: Sheet C-30 contains notes regarding proper erosion and sedimentation control measures and Attachment 8 of the application provides a detailed Erosion and Sedimentation Control Plan. The site work earthmoving activities must be conducted by a contractor who is certified by MDEP in erosion control best practices. Town Engineer Steve Johnson notes in his memo that the applicant has provided an acceptable site-specific erosion and sedimentation control (ESC) plan for the project. All ESC BMPs must be installed prior to the disturbance of the vegetation.

3. Will adequately provide for the disposal of all sewage and wastewater;

Staff Comment: The house will be connected to public sewer.

4. Will not have an unreasonable adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Staff Comment: In 2017 the Town of Yarmouth's Harbormaster provided a memo stating no concerns with the project as regards shellfish habitat. No comments have been received from the Harbormaster on the 2022 application.

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters and other identified scenic resources;

Staff Comment: The proposed project will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters as well as other identified scenic resources. In 2017, a mature oak tree was slated for removal for construction of a two-car garage. The applicant has revised the house's designs to only include a

one-car garage and has taken efforts to preserve and protect this tree during construction. Conditions of approval following the Tree Advisory Committees recommendations are suggested.

The applicant has also provided documentation of pedestrian and driveway easements for the abutting neighbors that will preserve access to the shoreline.

6. Will protect archaeological and historic resources as designated in the comprehensive plan;

Staff Comment: Although the structure is quite old, the property is not within a local historic district, the demolition delay overlay zone, or specifically identified in the Comprehensive Plan or the Phase 1 Architectural Survey as being a future study area. A letter of no impact from Maine Historic Preservation Commission (MHPC) is requested as a condition of approval.

7. Will not adversely affect existing commercial, fishing, or maritime activities in the Commercial, WOC I, WOC IIII, GD, or Industrial Districts,

Staff Comment: The project is not located in any of the districts listed above and will have no impact on existing commercial, fishing, or maritime activities located in such districts.

8. Will avoid problems associated with floodplain development and use, and

Staff Comment: The application states that "a portion of the parcel is located within the 100-Year Flood Plain, but the existing building improvements are not located within the Flood Plain shaded areas and the ground surface at the proposed building site is at least 5 feet above the flood level of elevation 12 shown on the 2017 FEMA Flood Mapping. Requirements of the Overlay District requires the lowest floor of all buildings be elevated at least 1' above the 100-year flood level. Therefore, the basement floor for the new cottage has been set at elevation 13 to meet these requirements."

Previous concern from the Town Engineer in 2017 about the finish floor elevation were resolved with this submission.

9. Has been designed in conformance with the land use standards of the SOD.

Staff Comment: The staff find that the project is generally in conformance with the land use standards of the SOD, subject to approval of the expansion and relocation criteria of Shoreland Zoning Article IV, Section R.5.a(1) Expansion, Section R.5.a(3), Relocation and Section R.5.a(4) Reconstruction or Replacement.

The proposal is still non-conforming with respect to Article IV.R.7.c.4, which states that "...*non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone.*" The applicant has calculated the existing non-vegetated area as 3,142 sq ft, or 43%, and the proposed non-vegetated area as 3,042 sq ft, or remaining at 42%, as a lawful nonconformity. The project increases the structure from 1,603 to 1,688 sq ft, and pavement from 332 sq ft to 672 sq ft, which is off-set by a reduction in gravel surfaces from 1,207 sq ft to 682 sq ft. Below is the current table showing these changes.

The current application has resolved the prior concern about a proposed re-vegetated area between the applicant's property and the Jackson property to decrease the percentage of non-vegetated surfaces on the property. The plantings are no longer proposed, and the applicant and abutting Jackson family members executed a pedestrian access easement.

Figure 11. Changes to Impervious Surfaces (Provided by Applicant)

IMPERVIOUS SURFACE TABLE			
SURFACE	EXISTING	PROPOSED	
PAVEMENT	332 SF	672 SF	
GRAVEL	1,207 SF	682 SF	
STRUCTURE	1,603 SF	1,688 SF	
TOTAL	3,142 SF	3,042 SF	
LOT COVERAGE	43%	42%	

IX. STAFF RECOMMENDATION

The staff recommend approval with the proposed conditions of approval.

X. PROPOSED MOTION

Reconstruction or Replacement and Relocation Assessment

On the basis of the application, plans, reports and other information submitted by the applicant, and the findings and recommendations contained in Planning Board Report dated June 16, 2022, and the testimony presented at the Planning Board hearing, regarding Shoreland Permit Review Chapter 701 Article IV.R.a.(3) and (4), Reconstruction or Replacement, and Relocation Assessment, for the construction of a new single-family home and other site improvements at 109 Sunset Point, Map 23 Lot 53, Maria Atkins, Applicant, the proposed new single-family home **[is/is not]** set back from the shore edge to the greatest practical extent according to the standards for relocation contained in Article IV.R.a(3), and **[is/is not]** approved as to location.

Such motion moved by	, seconded by	, and voted	_ in favor,
opposed,			

Shoreland Permit

On the basis of the application, plans, reports and other information submitted by the applicant, and the findings and recommendations contained in Planning Board Report dated June 16, 2022, and the testimony presented at the Planning Board hearing, regarding Shoreland Permit Review Chapter 701 Article IV.R.11 a & b, for the construction of a new single-family home and other site improvements at 109 Sunset Point, Map 23 Lot 53, Maria Atkins, Applicant, the plan **[is / is not]** in conformance with the standards for review of this section, and **[is/is not]** approved subject to the following condition of approval:

- 1. The applicant shall not utilize blasting to aid in the construction of the new single-family home and the other site improvements.
- 2. The applicant shall substitute a swamp white oak for the red oak in the replanting plan.
- 3. The applicant shall coordinate with the Department of Public Works and the Yarmouth Water District to ensure that the new home construction, paving, and water main projects are appropriately coordinated.
- 4. The applicant shall install a solid fence to provide screening of the proposed generator.
- 5. The applicant shall have a professional surveyor lay out the foundation in the field
- 6. Prior to the issuance of a building permit, the applicant shall submit a letter of no impact from the Maine Historic Preservation Commission.
- 7. Prior to the issuance of a building permit, the applicant shall comply with the requirements of the Fire Chief as outlined in his memorandum dated May 29, 2022.
- 8. All erosion and sedimentation controls (ESC) best management practices (BMPs) shall be installed prior to the disturbance of site soils and vegetation. During construction, the applicant and their construction manager/contractor shall perform the required inspections and enforcement of the ESC plan per MDEP

requirements, including weekly inspections and documentation of all inspection work. In addition, the Town will be performing site inspections and will be reviewing the inspection records per the Town's NPDES MS4 General Permit.

- 9. During construction, the applicant and their construction manager/contractor shall ensure that the protective fence to be placed around the white oak tree to be preserved is maintained in good condition. In addition, the applicant and their construction manager/contractor shall ensure that the protected tree is adequately watered and fertilized and a thick layer of mulch is placed within the protected area for the duration of construction. The use of machinery, heavy foot traffic, storage of building materials, washing equipment, use of chemicals, and similar hazards should be avoided. The applicant and their construction manager/contractor shall ensure that crane mats are utilized wherever heavy equipment is expected.
- 10. During construction, only two parking spaces shall be established for the construction manager/contractor team. All other employees must park off site at a Park and Ride or other public parking area. Parking on Sunset Point is prohibited during construction.

Such motion moved by	, seconded by	, and voted	in favor,
opposed,			

Attachments:

- 1. Steven Johnson, Town Engineer, No Further Comments 6/8/22
- 2. Erik Street, Director of Public Works, Memo 5/27/22
- 3. Michael Robitaille, Fire Chief, Memo 5/29/22
- 4. Tree Advisory Committee, Memo 6/10/22

MAP 24 LOT 53

Submit Comments to Erin Zwirko by __6/10/22__

TOWN OF YARMOUTH 200 Main Street

Yarmouth, Maine 04096

(207)846-2401

Fax: (207)846-2438

NOTICE OF PLANNING DEPARTMENT FILING & REQUEST FOR COMMENT

Date Rec'd.: 5/25/22 Agenda Date: 6/22/22 Project Description: Shoreland Review Project Location: 109 Sunset Point Applicant: Maria Atkins Agent/Contact: Michael Gotto - bonnie@stoneybrookllc.com, mike@stoneybrookllC.com

<u>Project Description</u>: Single family home

			Date Completed:
	Review For Completeness/Checklist		5/25/22
	Respond To Applicant Re: Completeness		5/25/22
	Staff Input/Request Sent:		5/27/22
	1. Director of Public Works (full size)		X
	2. Town Engineer (full size)		_x_
	3. Fire Chief (pdf)		_x_
	4. Police Chief (pdf)		_X_
	5. Director of Community Svcs (pdf)		_X_
	6. Yarmouth Water District (pdf)		_X_
	7. Code Enforcement Officer (full size)		_X_
	8. Town Manager (pdf)		_X_
	9. Harbormaster (pdf)		_X_
	10. School District (pdf)		_X_
	11. Tree Advisory Committee (pdf)		_X_
	12. Economic Development Director (pdf)		_X_
	13. Planning Director (full size)		_X_
	14. Assessor - Subdivision Only (pdf)		
	15. Bike & Ped Committee (pdf)		_X_
	16. Historic Preservation Committee (pdf)		
	17. Trattic Peer Review - TYLin (pdf)		·
_			
	Notice Letters Created/Sent		
	l Agenda To PB		
	Agenda Posting:		
	1. Forecaster		
	2 Website		
	3 Pullatin Dagad		
Ц	copy Of Findings And Decision In File		

Town of Yarmouth ME

Director of Public Works

MEMORANDUM

To: Erin Zwirko -AICP, LEED AP - Director of Planning & Development

From: Erik S. Street, Director of Public Works

CC: Steve Johnson, PE, Town Engineer, Wendy Simmons, Karen Stover

Date: 5/27/2022

Re: 109 Sunset Point - 2nd review

My only comment has to do with seasonal road postings. In the Trademark letter from Ben Trout, he states that heavy equipment will be used starting around Mid-October of 2022 and ending around May of 2023.

Contractors and suppliers need to be aware that Prince's Point Rd will be restricted to 23,000 pounds registered vehicle weight, starting sometime in February and ending sometime mid to late April. During this time, vehicles registered for more than 23,000 pounds will not be allowed to travel over posted roads without a permit from the Town. Permits will only be issued when weather conditions allow.

While not impossible, heavy vehicle access will be much harder during this time.



MICHAEL ROBITAILLE, CHIEF OF DEPARTMENT

Attachment 3

BILL GODDARD, DEPUTY CHIEF

TO: Erin Zwirko, Town Planner CC: Nicholas Ciarimboli, Code Enforcement Officer Subject: 109 Sunset Point Road

On May 29, 2022, I reviewed the application submitted by Michael Gotto from Stoneybrook Land Use on behalf of Maria Atkins. The application submitted was to replace an existing cottage with a new home. The following is required based on National Fire Protection Standards and local municipal ordinances.

- Interconnect smoke detectors are required
- Carbon Monoxide detectors are required to be installed
- Gas Detectors for the purpose of detecting natural gas, propane, fuel or any liquified petroleum gas will be required in any room that has appliances supported by these fuels.
 Title 25, Chapter 317, Section 2469
- In accordance with Chapter 317 of the Yarmouth Ordinance, a sprinkler system, will be required to be installed. Plans are required to be submitted to the State Fire Marshalls Office for approval.
- The Yarmouth Water District must approve the water rates and connections for the sprinkler system.
- House numbers are required and must be visible from the road if within 50 feet of road.
 If the home is greater than 50 feet the applicant will be required to have 4" numbers at the entryway of the road.

Sincerely,

Michael Robitaille

Michael Robitaille Fire Chief

Yarmouth Tree Advisory Committee

TO: Planning Board Members Erin Zwirko, Planning Director

- DATE: June 10, 2022
- FROM: Rebecca Rundquist, Chair Michael Brandimarte, Scott Couture, Clyde Hodgkin, Susan Prescott, Lisa Small
- RE: 109 Sunset Point Application Final

The Yarmouth Tree Advisory Committee has reviewed the 109 Sunset Point Application for your meeting on 6-22-22 and has the following comments.

- This project is located in the Shoreland Overlay District, requiring careful attention to construction effects on soil and vegetation. We reviewed the original application to get a better understanding of the project plan in this regard. The applicant plans to protect the large oak near the building site and to remove only two trees that are close to the building and already damaged. Four native trees will be planted to replace the two being removed.
- 2. Protection of the large oak: Oak trees are very sensitive to root disturbance. A strong protective fence should be erected on the perimeter of the tree's critical root zone, ideally at the drip line or at least a distance equal to one foot for every inch of diameter at breast height (DBH). The area should be adequately watered and fertilized. A thick layer of mulch should be placed in the area, and use of machinery, heavy foot traffic, storage of building materials, washing equipment, use of chemicals, and similar hazards all should be avoided. The applicant will establish crane mats wherever heavy equipment is expected.
- 3. The Maine Department of Agriculture Conservation & Forestry (MDACF) has advised that Oak wilt, a very destructive fungal disease, is approaching Maine but has not yet occurred here. To protect oak trees, they should not be pruned in the period May to September to avoid open areas. If any pruning of the protected oak is essential, wounds should be adequately sealed. Also, because white oaks are more resistant to oak wilt than red oaks, the applicant may want to plant a swamp white oak instead of the red oak currently planned.