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## YARMOUTH PLANNING BOARD MINUTES

March 22, 2023

### I. CALL TO ORDER

Chair Holden called the meeting to order at 7:00 PM.

### II. ROLL CALL OF MEMBERS

	PRESENT	ABSENT
Wendi Holden, Chair	X	
Janet Hansen, Vice Chair	X	
Hildy Ginsberg		X
Mary Lynn Engel	X	
Jerry King	X	
Ian Cromarty	X	

### OTHERS

Erin Zwirko, Director of Planning & Development  
Wendy Simmons, Administrative Assistant, Recording Secretary

### III. APPROVAL OF MINUTES

Upon a motion duly made by Mary Lynn Engel, seconded by Janet Hansen and carried by a roll call vote of 5-0 the minutes of the March 8, 2023, meeting were approved.

### IV. COMMUNICATION

Erin Zwirko gave the following update:

- An outline of the review and implementation of LD2003 is enclosed in the Planning Board materials. LD2003 is State mandated; but Towns have some flexibility on its implementation. On March 29<sup>th</sup> a public meeting will be held at the Yarmouth History Center regarding the law. The meeting will also be recorded for those that cannot attend. The April and May Planning Board meetings will feature different aspects of the law. After the completion of the meetings a recommendation will be forwarded to Town Council.
- Hancock Lumber's demolition permit to tear down the old Bank of America building has been approved and their building permit for the new addition is under review.

### V. PUBLIC HEARING ITEMS

#### A. OLD BUSINESS:

None

#### B. NEW BUSINESS:

#### 1. Action Item: Waiver Request of the Technical Standards for an Accessory Dwelling Unit (ADU) and Approval of the ADU, 636 North Road, Map 19 Lot 23, Robert and Carla Maguire, Applicants.

The applicant is requesting that an existing single-family dwelling located at the subject property be converted to an Accessory Dwelling Unit (ADU). The existing single-family dwelling to be converted is the small bungalow, with a total floor area of 1,416 square feet. As the total floor area exceeds the maximum of 900 square feet, the

applicants are requesting a waiver of the technical standards from the Planning Board. If the waiver request is granted, the applicants also request approval of the ADU. The Board is scheduled to vote on this item after public comment is received.

E. Zwirko presented for the applicant. During a recent renovation of the garage/bungalow space, it was discovered that the property at 636 North Road has two single family homes built on it. There is no documentation in the map and lot file indicating how this happened. The Planning Department has been working with the applicants to create a legal situation on the property that meets zoning requirements. They are requesting to designate the smaller of the two homes as an Accessory Dwelling Unit (ADU). The home is larger than 900sf which is the maximum size allowed for an ADU. The Planning Board has the flexibility to waive the ADU technical standards and approve a larger building. They are requesting if the Board grants the waiver of size, they also grant approval for the ADU. The buildings already exist, and this is the easiest and most straight forward path to resolving the situation.

Chair Holden opened to public comment.

Lenora Felker, 641 North Road

In 2015 when this lot was reviewed as part of the subdivision there was discussion about the Maguire property and how it was intended to be divided. Questioned if the approval of this larger ADU sets precedent for any other development or change of use on the property?

Julia Libby, 538 Portland St.

Questioned how LD2003 would impact this property?

Chair Holden closed public comment.

E. Zwirko indicated Planning Board approval would not set a precedent regarding additional development or change of use on the property. Any changes would require a building permit and further review.

W. Holden indicated LD2003 cannot be considered because it has not been passed or approved by the town.

The following motions were made:

On the basis of the application, plans, reports and other information submitted by the applicant, information from the public hearing, information and the findings and recommendations contained in Planning Board Report dated March 16, 2023 for an approval of a request for a Waiver of the Technical Standards for Accessory Dwelling Units, Robert and Carla Maguire, Applicant; 636 North Road, Map 19 Lot 23, regarding the applicable regulations and standards of Chapter 702, Site Plan Review, the Planning Board hereby finds and concludes that although it exceeds the maximum of 900 square feet for an Accessory Dwelling Units, that the structure still meets the required standards and is therefore approved.

**Such motion moved by Janet Hansen, seconded by Mary Lynn Engel, and voted 5 in favor, 0 opposed, Hildy Ginsberg, absent.**

On the basis of the application, plans, reports and other information submitted by the applicant, information from the public hearing, information and the findings and recommendations contained in Planning Board Report dated March 16, 2023 for an approval of an Accessory Dwelling Unit, Robert and Carla Maguire, Applicant; 636 North Road, Map 19 Lot 23, regarding the applicable regulations and standards of Chapter 702, Site Plan Review, the Planning Board hereby finds and concludes that the Accessory Dwelling Unit meets the required standards and is therefore approved subject to the following conditions of approval:

1. Prior to the issuance of a Certificate of Occupancy, the applicant shall file with the Cumberland County Registry of Deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:
  - a. The accessory unit shall not be sold separately.
  - b. The unit is restricted to the approved size.
  - c. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.
  - d. The above declarations are binding upon any successor in ownership of the property;
  - e. The deed restrictions shall lapse upon removal of the accessory unit.
2. Prior to the issuance of a Certificate of Occupancy, proof of primary residence shall be submitted to the Code Enforcement Office and shall include a copy of Driver's License or other recognized form of state or federal ID and a copy of a utility bill.

**Such motion moved by Janet Hansen, seconded by Mary Lynn Engel, and voted 5 in favor, 0 opposed, Hildy Ginsberg, absent.**

**2. Workshop Item: Concept Contract Zone Agreement, Chapter 701 Article IV.V, and Minor Subdivision, Chapter 601, 251 West Main Street, Map 46 Lot 86, Julia Libby, Applicant.**

The applicant is requesting a conceptual review of a Contract Zone Agreement (CZA) and Minor Subdivision to divide the existing 1.88 acre lot into three lots, not otherwise permitted in the Medium Density Residential (MDR) Zone, which has a 1-acre minimum lot size. Two new lots are proposed with 0.84 acres each. The proposal also includes preserving the existing historic house through a historic preservation easement. This is a concept review and discussion, and no vote will be taken. Public comment will be received.

Julia Libby, applicant gave an overview of the application. She is requesting a Contract Zone Agreement to split the 1.88 acre lot into 3 lots. Preserving the historic home on a 0.2 acre lot and dividing the remainder of the lot into 2 lots of 0.8 acres; but is willing to hear other suggestions. She was approached by Greg Paxton of the Historic Preservation committee suggesting this concept to preserve the historic home. This same concept was presented in October 2021; but since then, a Historic Ordinance was adopted and the Historic Preservation Committee was implemented. The proposal is in alignment with the Comprehensive Plan, located in a growth area and is like historic patterns of development. Historic Preservation of property was

established as a public benefit with the approval of the Contract Zone at the Chapin House next door at 233 West Main St. The proposal supports smart growth, creates more housing, and is walkable to the Village. With a Contract Zone the Board can dictate requirements including building size and style which establishes a predictable outcome.

J. King supported this plan in 2021 as a good plan. The applicant could currently demolish the existing home and cut down the trees with no further permission. Eventually the lot will be built on and a CZA would allow the Board to set parameters around what is built. Questioned how the project would be managed since there are 2 parts; preservation of the historic home and building of 2 houses? Questioned the plan to preserve green space which is a concern of the neighbors? J. Libby indicated all the detailed could be worked out in the CZA agreement and a large buffer would be created for the neighbors.

Chair Holden opened to public comment:

Doug Robertson, 180 Newell Road

Requested the Board take 4 things into consideration on the application.

1. Questioned if zoning restrictions were clear to the applicant when they bought the property?
2. Consider the concerns of the neighbors regrading safety, runoff, zoning and development.
3. There is not adequate rationale that justifies a waiver.
4. Questioned if the applicant would keep submitting this application with the intent of firing out the Board until they approved it.

Concerned that a large lot is being divided up unnecessarily. Just because other lots in the neighborhood are of comparable size doesn't justify the request.

Jim Crofts, 51 Deacon Road

Questioned how LD2003 would impact this proposal? Indicated the Chapin House also has a conservation easement in addition to historic preservation of the building.

Mike Lysek, 21 Newell Road

Echoed J. Crofts concerns. Appears to be an opportunity to sneak in more and more houses. Proposal is identical to the October 2021 except the trees are no longer protected and housing access moved away from West Main St. to Newell Road. Concerned about the role of HPC and why they were promoting development? Concerned the HPC overstepped their bounds in reviewing this application without notifying the public. Concerned the HPC is circumventing the Planning Board. At the October 2021 meeting a Board member indicated their opinion was historic preservation was a private benefit and should not be considered a public benefit.

Kathryn Vaznis, 25 Newell Road

Supports all other neighbors' comments. Does not support a driveway onto Newell Road as it is a dangerous curve.

Judy Howe, 41 Anderson Avenue

Does not understand how the applicant will squeeze 3 houses onto the lot. Does not understand how a minor subdivision will fit onto the property.

Merry Chapin, 233 West Main St.

Concerned the property is advertised online to build a \$2.5 Million home. The applicant talks about building affordable housing and this is not affordable. Concerned about the character of the neighborhood, preservation of the historic home, what happens with the tenants living in the home if the house undergoes preservation. She offered to have the house moved to preserve it but believes it should stay on its original lot. The home is eligible for the National Historic Register. Indicated she also has a conservation easement on her property which contributed to the approval of the contract zone.

Zoe Rockwood, 59 Deacon Road

Questioned if the historic home could be demolished? Concerns about displacement of animals and pests. Concerned about drainage and the impacts of more development around her property. She continues to have drainage problems from Village Run. Concerned how LD2003 would impact the lot if the CZA were approved and how many additional houses could be built. Concerned about the loss of trees and animal habitat.

E. Zwirko – The house went through the Demolition Delay process with the Planning Board and the Board determined it to be a Building of Value in late 2020. In response to the delay the applicant proposed the initial Contract Zone which was denied. The 180 day requirement to delay demolition and find other alternatives expired in June 2021 and the owner could now demolish the house following receipt of a demolition permit with no other restrictions or approvals from the Planning Board.

Lisa Small, Tree Advisory Committee

Echoes Zoe Rockwood's comments regarding the loss of trees and animal habitat. Part of the history and character of Yarmouth is the historic tree growth.

Greg Paxton, Historic Preservation Committee

When he approached Ms. Libby with the idea of 3 lots, he was unaware that the same application had been presented to the Planning Board in October 2021. He would argue that Historic Preservation is a public benefit. There are energy and environmental costs associated with tearing down a structure and disposing of the debris. The loss of trees should be considered. Yarmouth is sorely behind other communities regarding historic preservation. When the HPC discussed this property, they thought 3 lots fit into the context of this property and the surrounding neighborhood regarding lot size. If the house is demolished an empty lot could build up to 4 new units according to LD2003. Currently a preservation easement is the only way to protect the house. A contract zone can address all the neighbors concerns regarding driveway location, building location, drainage, tree preservation and preservation of the house.

Ed Ashley, 20 Spartina Point

Echoes Mr. Paxton's point that Historic Preservation is a public benefit, not a private benefit.

Susan Prescott, 58 Hillside St.

Approved: \_\_\_\_/\_\_\_\_/\_\_\_\_

There is value in preserving the house and the trees. Concerned the house is being used as a bargaining chip and how CZA's are written and implemented. The applicant should restrict the building envelopes on the property. A study should be done to determine the best placement of, trees, utilities, houses, etc.

Susan Gifford, 41 Newell Road

Concerned the property is owned by an LLC and nothing has changed since the last proposal. Questioned the acreage discrepancy. Does not agree with a driveway onto Newell Road due to safety concerns. Concerned about a \$2.5 million home advertised on the internet. Concerned about drainage, erosion, loss of trees, taxes and impacts on the schools.

Mike Lysek, 21 Newell Road

Requested clarification on G. Paxton's comments about the potential to build 4 units.

Public comments closed.

E. Zwirko – According to LD 2003 if a lot is vacant and within a growth area, it could potentially have 4 units. If there is an existing unit, it could add 2 more units. If the house is demolished after 7/1/23 when LD 2003 goes into effect the Town decides what would be allowed.

The Board asked about the lot size of Ms. Libby's property. E. Zwirko indicated that the Assessor's Database and the Town's GIS is only an estimate. The best way to know the size of the property is to have it surveyed. J. Libby – The assessor's 1.79 acreage information is an estimate. The property was surveyed, and the total acreage is 1.88.

The Board requested more work be done on the Concept plan. There are many unanswered questions, but the Board acknowledged that providing additional information requires engaging with a design engineer. Concerned about driveway placement, building locations and drainage. Requested a topographic map indicating drainage pattern.

The Board discussed the prior concept reviews as noted by the public comment. The previous meeting minutes did not attribute the statement of what is a public benefit to any single Planning Board member. Since the Planning Board deemed this structure a Building of Value previously, and since the structure is outside of a local historic district, and the demolition delay has expired, preservation of the home could be deemed to be a public benefit since there are no other protections available. There was no Board consensus that the concept plan was reasonable with 3 lots and suggested the applicant consider 2 lots.

## ADJOURNMENT

With no objection, the meeting adjourned at 9:15 PM.

Respectfully submitted:

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Wendy Simmons, Administrative Assistant, Recording Secretary