



**PLANNING DEPARTMENT REPORT
YARMOUTH, MAINE**

Minor Site Plan

Accessory Dwelling Unit, 538 Portland Street

Edward Libby, Applicant

Map 30, Lot 14

Prepared by: Erin Zwirko, Director of Planning & Development,
and Nicholas Ciarimboli, CEO/Planning Assistant

Date: August 16, 2021

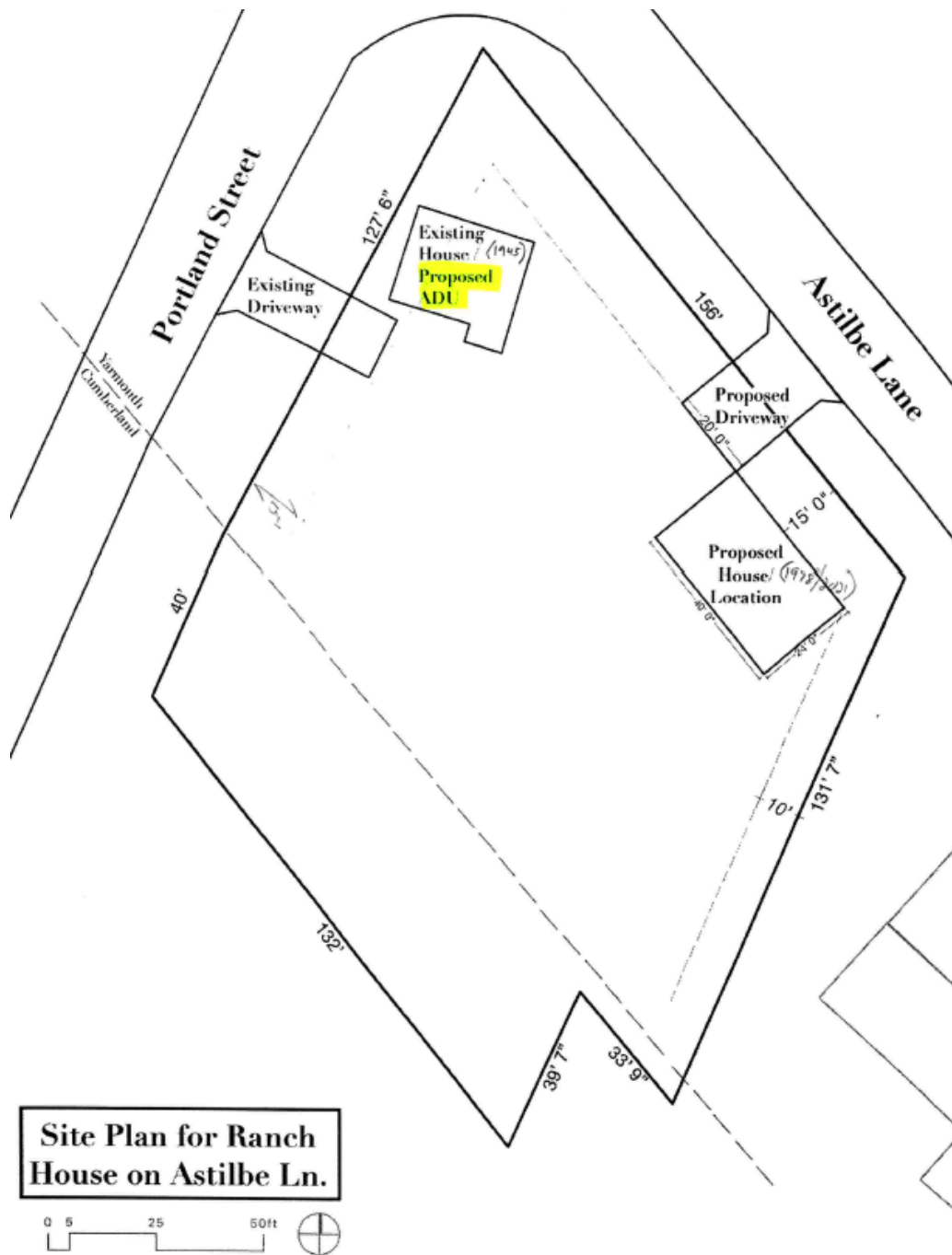
I. INTRODUCTION AND PROJECT DESCRIPTION

Ed Libby proposes to establish an accessory dwelling unit (ADU) on the property at 538 Portland Street per Chapter 702, Site Plan Ordinance. The applicant proposes to designate the existing structure on the site as an ADU and move an existing building located on Old County Road to a new foundation on Portland Street.



View of property and existing structure from Astilbe Lane

The applicant has also requested a building permit to move the structure from Old County Road to the subject property and set it on a foundation. The building permit is being considered concurrently with this request for minor site plan approval of the ADU. In the photo above, the primary dwelling unit will be located to the left of the existing structure.



Site Plan for 538 Portland Street

The existing structure on the site is a Cape Cod style home and the structure to be moved to the site is a ranch style home. The existing lot is approximately 0.50 acres. The dashed line in the image above represents the municipal boundary between Yarmouth and Cumberland. Access for the ADU will remain from Portland Street. The primary dwelling unit will have access from Astilbe Lane. The property is located at the corner of Portland Street and Astilbe Lane.



Structure to be Moved to 538 Portland Street



Existing Structure at 538 Portland Street

The ADU is reviewed as a Minor Site Plan Review per Chapter 702 Article 1.J.13 which outlines the requirements for ADUs.

II. PROJECT DATA

<i>SUBJECT</i>	<i>DATA</i>
Existing Zoning	Medium Density Residential
Existing Use	Single-family home
Proposed Use	Single-family home with detached ADU
Parcel Size	0.54 acres

Uses in Vicinity: The surrounding neighborhood consists primarily of single-family homes, but also includes a municipal sewer pump station, a CMP corridor, a MaineDOT Transportation Maintenance lot, and Main Line Fence located just over the town line in Cumberland on Middle Rd. The Cumberland/Yarmouth municipal boundary bisects the subject parcel.

III. PUBLIC COMMENT

Notices of this public hearing were sent to 15 property owners in the vicinity (within 500 feet) of the proposed development. Six abutters on Astilbe Lane expressed concern with the proposal. The abutters were concerned that this proposal is too similar to the contract zoning that was denied by the Town Council in May 2021 and that the proposal is not consistent with the ADU standards.

IV. DEVELOPMENT REVIEW

A. SITE PLAN STANDARDS (Chapter 702, Article 1.J.13, Accessory Dwelling Unit)

13. Accessory Dwelling Unit: any request shall include a plot/site plan showing the following:

- a. Lot boundaries and dimensions at scale.*
- b. Zoning district.*
- c. Date of plan.*
- d. Property owner with deed reference.*
- e. Lot area.*
- f. Location and setback of all buildings.*
- g. Date of construction of single-family dwelling.*
- h. Separate floor layout of all finished levels.*
- i. All plumbing facilities, kind and location.*
- j. Use of all rooms.*
- k. All entrances/exits.*
- l. All partitions, temporary or permanent.*
- m. Location and type of all appliances.*
- n. Rights of way, public and private*
- o. All easements*
- p. Street names*
- q. Sewerage facilities*
- r. Off-street parking spaces*

Town Comments: The applicant has provided a plan that illustrates these items.

In permitting an ADU, the Planning Director and/or CEO shall find that:

- a. Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.*

Town Comments: In this case, the applicant will be moving a structure to the site and designating it as the primary dwelling unit. The existing structure on the site will be designated as the ADU.

Although the two structures are of differing architectural styles and were built at different times, the two structures are not out of scale with each other, both of a modest mass and height, and both representative of traditional American vernacular styles. The two structures are compatible with each other and neither structure overpowers the site. The position of each structure on the property provides the required parking and open space, and begins to establish the 'rambling' development pattern commonly found throughout New England often referred to as 'big house, little house, back house, barn' style.

- b. The exterior design is in harmony with, and maintains the scale of the neighborhood.*

Town Comments: The Astilbe Lane subdivision was developed between 2001 and 2003 with typical two-story suburban style houses approximately 2,400+ SF with attached two-car garages. These homes are larger and are more modern than the majority of homes built on Portland Street and on West Elm Street within the vicinity. The lot sizes on Astilbe Road are larger as well averaging approximately 1.2 acres. Other lots within the vicinity range from .32 acres to almost 2 acres, but average around .77 acres. The existing structure on the subject property and the structure to be moved to the property are more modest in size and relate to the homes located between Portland Street and West Elm Street. The larger area near this intersection include homes that were built at many different times and on different size lots. Therefore, the proposal is in harmony with and maintains the scale of the neighborhood.

- c. The accessory unit does not result in excessive noise, traffic or parking congestion.*

Town Comments: The proposed ADU will not create excessive noise, traffic or parking congestion. The ADU will have dedicated parking off of the larger roadway, avoiding the Astilbe Lane cul-de-sac.

- d. The property fronts on a public water main and public sewer line each with the capacity to serve the additional accessory unit.*

Town Comments: The Yarmouth Water District Superintendent and the Town Engineer confirmed that the public water and public sewer, respectively, have capacity to serve the additional unit.

- e. Major access stairs, deck entry doors, and major windows will generally be limited to the walls facing the primary residence. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.*

Town Comments: The ADU is an existing structure on the site, and the primary dwelling unit will be moved to the site. Although the two structures are of different style, the ADU is screened by existing vegetation on the site. The location of the ADU at the corner of Portland Street and Astilbe Lane ensures that the ADU does not visually dominate the surrounding properties and does not impact the privacy of the neighboring side or rear yard. When viewing the property from Portland Street, the existing structure to be designated as the ADU appears as the primary structure. When viewing the property from Astilbe Lane, the structure to be moved to the site appears as the

primary structure. Additionally, while the homes on Astilbe Lane are newer and larger, the primary dwelling unit and the ADU are in keeping with the scale of the existing homes on Portland Street and West Elm Street.

- f. The orientation and location of the buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including heritage or significant trees and shrubs to the extent feasible and minimize alteration of natural land forms.*

Town Comments: Although a number of trees were removed from the eastern property line, the ADU is screened by significant vegetation at the corner of Astilbe Lane and Portland Street. Maintaining this existing vegetation minimizes the amount of alteration that occurs on the site and also provides screening of the ADU from the corner. As a condition of approval, the applicant shall maintain this vegetative buffer.

- g. Building profiles, location and orientation relate to natural land forms.*

Town Comments: The property is flat and does not require the alteration of any natural land forms.

- h. One parking space shall be provided on-site for each a studio and or one bedroom accessory unit. Two parking spaces shall be provided on site for each a two bedroom accessory unit. Parking of the accessory unit is in addition to the required parking for the primary residence. Required parking spaces for the primary residence and the accessory dwelling unit may be provided in tandem on a driveway. A tandem arrangement consists of one car behind the other. No more than two cars in tandem may be counted towards meeting the parking requirement.*

Town Comments: The existing property has informal parking located off of Portland Street adjacent to the structure. In the application materials, the applicant indicates that parking for the ADU will be in the same general location off of Portland Street. Parking for the primary dwelling unit will be located off of Astilbe Lane via a new curb cut. As a two-bedroom ADU, two parking spaces are required. The site plan shows the parking area as 12 feet by 15 feet. Although this area appears to accomodate two parking spaces, the ordinance requires parking spaces to be 9 feet by 18 feet.

As a condition of approval, the ADU parking area shall be designed to be 18 feet by 18 feet or other acceptable configuration of two 9 feet by 18 feet spaces and be constructed so that the driveway entrance and parking area are formalized.

- i. A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit. Only one ADU is permitted per lot.*

Town Comments: Only one accessory dwelling unit will be located on the property. A structure will be moved to the property and placed on a foundation. The structure to be moved will be designated as the primary dwelling unit, and the existing structure will be designated as the accessory dwelling unit. Although this standard references “construction”, the act of moving the structure to the property, placing it on a foundation, and connecting it to utilities is understood to be construction.

- j. *Accessory dwelling units are not eligible for variances to setbacks.*

Town Comments: The structure to be designated as the accessory dwelling unit is pre-existing nonconforming in terms of setbacks and is not required to obtain any variances for the location. The standard is applicable to new structures which would require a variance for the proposed placement. Additionally, the structure to be moved to the site to be designated as the primary dwelling unit will conform to the required setbacks of the zoning district.

- k. *Before obtaining a building permit for an ADU the property owner shall file with the 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.*

Town Comments: These requirements will be a condition of approval. The applicant shall produce the recorded restriction prior to the issuance of a building permit.

In addition, the applicant shall provide documentation that one of the units will be owner occupied prior to occupancy of either dwelling unit. The fact that the property is owned by an LLC is not a concern as many properties are owned through different ownership arrangements. However, the owner shall produce information indicating they are a member of the LLC, state or federal identification in the owner's name showing the property address, and a utility bill in the owner's name for service at the property address.

- l. *Units within an Accessory Structure shall not exceed 900 square feet. If an ADU occupies an entire single floor, the Planning Department may allow for an increase in the allowed size of the ADU in order to efficiently use all of the floor area, so long as all other standards of this section are met.*

Town Comments: The applicant has indicated the floor area of the unit to be 717 SF. This appears to be based on the interior livable area which the Planning Department has deemed to be an acceptable approach. Livable area does not include closets, stairwells, shafts, or other non-habitable spaces. In spaces with sloped ceilings, habitable space should only be calculated for the area having a ceiling height of five feet or greater in accordance with industry standards including 2015 International Residential Code (IRC)/ R304.3 *Height effect on room area*. The assessor's information indicates the Living Area as 924 SF, which is based on the exterior dimensions of the house and accounts for the discrepancy in the two numbers.

- m. *An ADU may have no more than two (2) bedrooms.*

Town Comments: The structure proposed to be designated as an accessory dwelling unit has two bedrooms.

- n. The water and sewage facilities shall meet all existing laws and codes.*

Town Comments: The existing house on site is currently served by Town Water and Sewer. The proposed new structure will be served separately by Town Water and Sewer and has been deemed by both the Yarmouth Water District and the Sewer Department to be acceptable to connect. These connections will be inspected by their respective departments. There are currently no known violations of this nature or any on the property.

The Town Engineer has reviewed the proposal and notes that the property is located along a low pressure sewer system and will require a small private sewer pump station. The system must meet Chapter 304 Sewerage Ordinance requirements as well as the Town's technical standards for sewer infrastructure. In addition, a minimum of five feet separation is required from other underground utilities.

These requirements will be conditions of approval.

- o. Approval of an accessory apartment shall be conditional on obtaining applicable building, plumbing, electrical and any other necessary municipal permits.*

Town Comments: The Town Engineer also requires the installation of erosion and sedimentation control measures. During construction erosion and sedimentation control, Best Management Practices (BMP's) shall be installed prior to construction activities and shall be maintained by the contractor until the permanent vegetation is in place. It is also critical that the contractor performing construction inspect, maintain, and repair all ESC BMP's prior to and following rainstorms to ensure the effectiveness of the BMP's. All inspection work must be documented. Maintaining the erosion and sedimentation control measures is a condition of approval. Obtaining all other permits is also a condition of approval.

- p. The Fire Chief must review and sign off on the application.*

Town Comments: The Fire Chief reviewed the application and has approved the unit with the following conditions:

- Interconnected smoke alarms and carbon monoxide alarms shall be required throughout the ADU in accordance with NFPA 101, NFPA 72 and State Statute, and
- The installation of a fire extinguisher is required, which is to be placed in proximity to the ADU's kitchen.

These requirements will be conditions of approval.

- q. Unless part of the design of an existing single family dwelling the dwelling(s) shall have only one (1) front entrance and all other entrances shall be on the side or in the rear of the dwelling. A front entrance leading to a foyer with entrances leading from the foyer to the two (2) dwelling units is permitted. Outside stairways (either open or enclosed), that service an Accessory Dwelling Units on upper stories are not permitted.*

Town Comments: The proposed ADU is a detached structure from the primary dwelling unit and as such no foyer is proposed. The detached ADU has one front entrance, and the secondary entrance is on the side of the dwelling.

- r. For an ADU located within an existing garage or other outbuilding, the structure is not required to approximate the exterior features of the existing single family dwelling, but any exterior modifications should be consistent with the architectural style of that structure unless the building is upgraded per the requirement of new structures or unless the new structure is designed in a traditional New England form such as a barn.*

Town Comments: The structure to be designated as the accessory dwelling unit is a Cape Code style structure. Although not an existing garage or other outbuilding, the proposal does not modify any of its existing exterior and thus will remain consistent in its architectural style.

- s. An existing single family dwelling that is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements may be expanded to incorporate an Accessory Apartment subject to the requirements of Chapter 701 of the Yarmouth Code Article III for the expansion of other non-conforming single family dwellings.*

Town Comments: The accessory dwelling unit is proposed to be located within a detached structure. This standard is not applicable.

- t. ADU's may be permitted on back lots.*

Town Comments: The property is not a back lot. This standard is not applicable.

- u. ADU's are not permitted on a lot with a non-conforming use.*

Town Comments: The existing single-family use is a conforming use for a lot within the medium density residential (MDR) district.

- v. ADU's are not permitted on a lot with mixed uses.*

Town Comments: The lot does not have mixed uses. This standard is not applicable.

- w. When an owner wishes to eliminate the accessory apartment proof of the removal of the second kitchen and the restoration of the apartment to its status before the conversion shall be submitted to the satisfaction of the Planning Department. The owner shall record a Release of the Declaration of Restrictions on the Land after inspection and confirmation by the Code Enforcement Officer.*

Town Comments: This standard will be included as a condition of approval.

V. ADMINISTRATIVE APPROVAL

Based on the record, the Planning and Development staff believe that the Minor Site Plan Approval for an ADU

at 538 Portland Street is consistent with the standards of approval subject to the following conditions:

1. Due to the property's location along a low pressure sewer system, the applicant shall install a small private sewer pump station. The system must meet Chapter 304 Sewerage Ordinance requirements as well as the Town's technical standards for sewer infrastructure. In addition, a minimum of five feet separation is required from other underground utilities and a sewer connection permit will be required before building permits are issued.
2. Interconnected smoke alarms and carbon monoxide alarms shall be required throughout the ADU in accordance with NFPA 101, NFPA 72 and State Statute.
3. The installation of a fire extinguisher shall be required, which is to be placed in proximity to the ADU's kitchen.
4. During construction erosion and sedimentation control, Best Management Practices (BMP's) shall be installed prior to construction activities and shall be maintained by the contractor until the permanent vegetation is in place. It is also critical that the contractor performing construction inspect, maintain, and repair all ESC BMP's prior to and following rainstorms to ensure the effectiveness of the BMP's. All inspection work must be documented. Maintaining the erosion and sedimentation control measures is a condition of approval.
5. Prior to the issuance of a building permit, the property owner shall file with the 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.
6. Prior to the issuance of an occupancy permit, the property owner shall provide suitable documentation that indicates that either the primary dwelling unit or the accessory dwelling unit is owner occupied.
7. Prior to the issuance of an occupancy permit, the accessory dwelling unit parking area shall be designed to accommodate two 9 feet by 18 feet parking spaces and be constructed so that the parking area and driveway entrance is formalized.
8. The applicant shall maintain the vegetated buffer at the corner of Portland Street and Astilbe Lane such that the accessory dwelling unit is screened.

Attachments

1. Staff Comment – Eric Gagnon, Yarmouth Water District – email 8/2/2021
2. Staff Comment – Steve Johnson, Town Engineer – memo 8/4/2021
3. Staff Comment – Michael Robitaille – memo 8/2/2021
4. Public Comment – Andrea Pizzo and Howie Gu, 68 Astilbe Ln. – email 7/27/2021
5. Public Comment – Gene and Heidi Miller, 59 Astilbe Ln. – email 7/27/2021
6. Public Comment – Jayshree Patel, 47 Astilbe Ln. – email 7/27/2021
7. Public Comment – Jefferson Oranellas, 71 Astilbe Ln. – email 7/27/2021
8. Public Comment – Peter Senger, 54 Astilbe Ln. – email 7/26/2021

From: [Eric Gagnon](#)
To: [Wendy Simmons](#); [Nicholas Ciarimboli](#)
Subject: Re: Request for Comment - 538 Portland St. - DUE 8/2/21
Date: Monday, August 2, 2021 2:07:16 PM

Hi Nick,

It seems this project has changed scope a few times! Not sure it needs a response but we will be providing additional water service to this lot off of Astible.

Eric Gagnon
Superintendent
Yarmouth Water District
207.846.5821 phone
207.846.1240 fax
<http://YarmouthWaterDistrict.org/>

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On Tue, Jul 20, 2021 at 11:23 AM Wendy Simmons <WSimmons@yarmouth.me.us> wrote:

For your review:

https://yarmouth.me.us/index.asp?SEC=4AA035EC-DF91-4452-92E8-B6F629119AE0&DE=0FF6EECC-AD3C-4BAB-98DD-B8EE6D172AC1&Type=B_BASIC

Thanks. W

Wendy L. Simmons, SHRM-CP

Administrative Assistant

Planning, Code Enforcement and Economic Development

Town of Yarmouth

200 Main St.

Yarmouth, ME 04096

Phone: 207.846.2401

Fax: 207.846.2438

www.yarmouth.me.us

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To: wsimmons@yarmouth.me.us [Remove](#) this sender from my allow list

From:
egagnon@yarmouthwaterdistrict.org

You received this message because the sender is on your allow list.

Memo

To: Nicholas Ciarimboli, Code Enforcement Officer
From: Steven Johnson, P.E., Town Engineer
CC: Erik Street, Erin Zwirko, Wendy Simmons, Karen Stover, Tom Connolly
Date: August 4, 2021
Re: Minor Site Plan Application for ADU: Ed Libby, 538 Portland Street

Nick:

I have reviewed the subject application from Ed Libby for a minor site plan application to locate an ADU on the property at 538 Portland Street dated July 12, 2021.

I have the following technical comments.

1. I expect that the pertinent items from my memorandums to Alex Jaegerman dated January 14, 2021, November 23, 2020, and February 9, 2021, will be incorporated as part of Ed's project such as connection to public sewer and water, installation of appropriate ESC BMP's before disturbance of soil and obtaining all appropriate permitting as required.
2. It appears that the proposed ADU may be a bit larger in square footage than allowed, but I will leave that to your expertise;
3. I believe that ADU's require that one of the structures be owner occupied. I assume this requirement will be confirmed by your office.

If you have any questions, please do not hesitate to see me.



Town of Yarmouth,
Maine
Incorporated 1849
YARMOUTH FIRE RESCUE
178 NORTH ROAD (PO BOX 964)
YARMOUTH, MAINE 04096



MICHAEL ROBITAILLE, CHIEF OF DEPARTMENT

DAN MASSELLI, DEPUTY FIRE/EMS CHIEF
BILL GODDARD, DEPUTY CHIEF

MEMO

TO: Erin Zwirko
CC: Nicholas Ciarimboli, Zachary Stoler
Subject: ADU Application

On August 2, 2021 I reviewed the ADU application for 538 Portland Street (Map-30 Lot-14). I have approved the unit with the following conditions for the accessory dwelling unit:

- Interconnected smoke alarms and carbon monoxide alarms shall be required throughout the ADU in accordance with NFPA 101, NFPA 72 and State Statute.
- I am also requiring the installation of a fire extinguisher, which is to be placed in proximity to the ADU's kitchen.
- The home to be moved from 136 Old County Road to 538 Portland Street shall also be equipped with Interconnected smoke alarms and carbon monoxide alarms throughout in accordance with NFPA 101, NFPA 72 and State Statute.

Sincerely,

Michael Robitaille
Fire Chief

Attachment 4

From: [Nicholas Ciarimboli](#)
To: [Wendy Simmons](#)
Subject: FW: 538 Portland Street
Date: Tuesday, July 27, 2021 3:18:38 PM
Attachments: [Comments on Minor Site Plan Accessory Dwelling Unit at 538 Portland St.docx](#)

From: andrea pizzo <ajpizzo@gmail.com>
Sent: Tuesday, July 27, 2021 2:07 PM
To: Nicholas Ciarimboli <NCiarimboli@yarmouth.me.us>
Subject: Fwd: 538 Portland Street

Sorry Nicholas, I had your email address wrong on the original communication.
Thank you for your consideration!
Andrea

----- Forwarded message -----

From: **andrea pizzo** <ajpizzo@gmail.com>
Date: Tue, Jul 27, 2021 at 2:02 PM
Subject: 538 Portland Street
To: <mcromarty@yarmouth.me.us>, <rbates@yarmouth.me.us>, <tshannon@yarmouth.me.us>, <ahumphrey@yarmouth.me.us>, <rwaelnder@yarmouth.me.us>, <habbott@yarmouth.me.us>, <dcraig@yarmouth.me.us>, <nciarimboli@yarmouth.me.us>, <ezwirko@yarmouth.me.us>
Cc: Howie <howiegu@icloud.com>, andrea pizzo <ajpizzo@gmail.com>

Town Council Members, Nick Ciarimboli & Erin Zwirko

A couple of months ago the Town Council made a determination not to approve a contract zoning agreement on 538 Portland Street presented by Ed Libby. With the clearing of his lot currently underway, we wanted to again express our sincere rejection of this plan.

As one of the original residents of Astilbe Lane, this new primary residence being added with the driveway entering on Astilbe would greatly impact the visual aesthetic of the road not to mention the potential disruption due to construction. It was our understanding that this issue was decided upon with the driveway being accessed from Portland road so we were very disappointed to learn otherwise. The addition of a more than 40 year old house would not only affect the way our neighborhood is viewed it could potentially affect the property values as well.

I am attaching a summary of issues and non-conformances that Gene Miller, a fellow Astilbe neighbor, has drafted and that we stand completely in agreement with. We hope that you take all of this into consideration once again before any further decisions are made.

Thank you.

Andrea Pizzo & Howie Gu

68 Astilbe Lane

ajpizzo@gmail.com

howiegu@icloud.com

Comments on Minor Site Plan – Accessory Dwelling Unit at 538 Portland St

The proposed project to add an Accessory Dwelling Unit at 538 Portland St is **substantially non-compliant with permitting requirements and should not be approved**. Below are the specific requirements the proposed project does not comply with:

1-The proposal is not compatibility with existing residence:

Permitting requirement (a) – “Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping and other methods that conform to acceptable construction practices”

Non-compliance:

The proposed project creates a situation where the existing residence on the lot (which is being designated the ADU) is not compatible with the proposed primary residence. The proposed ADU is 2 stories tall while the proposed primary residence is only 1 story tall. The proposed ADU is green, while the proposed primary residence is grey. The proposed ADU has was built in the architectural style of 1945, while the proposed primary residence was built in the style of 1978.

2-The exterior design is not in harmony with neighborhood

Permitting requirement (b) – “The exterior design is in harmony with, and maintains the scale of the neighborhood.”

Non-compliance:

The proposed project is grossly out of harmony and scale with the neighborhood. Issues include:

The lot in question is 0.54 acres in size and not compliant with MDR zoning rules. The project proposes to add a driveway to Astilbe Lane in front of the new primary residence. All other houses on Astilbe lane are in full compliance with MDR zoning rules. The addition of a second detached large structure on the non-conforming lot is substantially different from the surrounding neighborhood.

-The setback of the existing structure (to be designated the ADU) does not meet minimum setbacks. The addition of a second detached large structure at minimum set-backs is substantially out of harmony with the remainder of the Astilbe Lane neighborhood where all other structures meet, and in fact greatly exceed, minimum setbacks.

-The proposed new primary structure is substantially out of harmony with the rest of the neighborhood from an architectural style. The proposed primary structure reflects architectural designs of 1978, while all other houses in the neighborhood reflect architectural styles from the early 2000s.

-It appears from the site plan that the proposed new primary residence is actually located closer to the neighboring house than to the ADU.

3 – Entry doors and major windows are not limited to walls facing the primary residence. The design of the accessory unit does not relate to the design of the primary residence and is visually dominating the surrounding properties.

Permitting Requirement (e) – “Major access stairs, deck entry doors, and major windows will generally be limited to the walls facing the primary residence. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.”

Non-compliance:

-Major entry doors and windows are not generally limited to walls facing the primary residence. Only one of the walls faces the primary residence, and large windows and the main door are on walls that do not face the primary residence

-The design of the accessory unit does not relate to the design of the primary residence. The proposed ADU is 2 stories tall while the primary residence is only 1 story tall. The position of the ADU at the corner of Portland Street and Astilbe Lane, combined with its two story height, visually dominates the property and is not in any way sheltered or obscured by the primary residence. The ADU is in clear view from all angles of Portland and Astilbe lane and the surrounding properties.

4 – The orientation and location of the buildings does not maintain natural resources including significant trees and shrubs

Permitting Requirement (f) – “The orientation and location of the buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including...significant trees and shrubs to the extent feasible and minimize alteration of natural land forms”

Non-compliance:

-The proposed project has led to the elimination of numerous mature trees and shrubs along the property line. These were eliminated by the owner immediately prior to submitting the ADU application.

5 – The proposed Accessory Dwelling Unit is not compliant with setbacks

Permitting Requirements (j) – “Accessory Dwelling Units are not eligible for variances to setbacks”

Non-compliance:

The project proposes to re-purpose the existing primary residence as the ADU. The structure substantially violates set-back requirements. Re-designating this non-compliant structure as the ADU is in violation of the requirement that ADUs are not eligible for setback variances.

6 – Owner does not occupy either the main residence or accessory unit

Permitting Requirements (k) – “Before obtaining a building permit for an ADU, the property owner shall file...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.”

Non-compliance:

-The owner does not presently occupy either the ADU or proposed main residence. Please verify that the proposer is occupying either the ADU or main residence.

7 – Proposed Accessory Unit exceeds 900 square feet

Permitting Requirements (l) – “Units within an Accessory Structure shall not exceed 900 square feet.”

Non-compliance:

-Based on the applicant’s documentation, the property appears to be 916 square feet. The applicant appears to have arbitrarily subtracted floor space on the second floor that is usable and accessible but has a nominal ceiling height of less than 5’. Furthermore, according to the Vision Government Solutions Assessors on-line database, the proposed ADU at 538 Portland Street is listed at 924 square feet (finished living area, not including basement or porch). Both sources indicate the proposed ADU is in excess of the square footage requirements.

8 – Not clear if the water and sewage facilities meet all existing laws and codes

Permitting Requirements (n) – “The water and sewage facilities shall meet all existing laws and codes”

Potential Non-compliance:

-Please verify that the water and sewage facilities meet all existing laws and codes? Is the intention to connect into the existing Astilbe Lane line?

Summary

The proposed project has numerous and significant non-compliances with the permitting requirements for an ADU and the Town of Yarmouth **should not** approve this project.

Attachment 5

From: [H Miller](#)
To: [Nicholas Ciarimboli](#); [Erin Zwirko](#); [Nat Tupper](#); [Steven Johnson](#); [Wendy Simmons](#)
Subject: 538 Portland Street
Date: Tuesday, July 27, 2021 8:49:30 PM
Attachments: [Comments on Minor Site Plan – Accessory Dwelling Unit at 538 Portland St.docx](#)
[Vision Government Solutions 538 Portland St.pdf](#)

Mr. Ciarimboli, Ms. Zwirko, Mr. Tupper

I am writing to provide comment on the Minor Site Plan Application for the Accessory Dwelling Unit proposal for 538 Portland Street. We strongly oppose the proposed application for multiple reasons. The proposal does not confirm to a number of the permitting requirements for Accessory Dwelling Units. In addition, this proposal appears to be a way to circumvent the Town Council's recent decision not to approve a contract zone agreement for that property.

More specifically, the proposal does not meet the basic definitions for an Auxiliary Dwelling Unit or Structure (it is neither subordinate or incidental); The owner does not occupy the property, the proposed unit violates setbacks, it is larger than allowed for an ADU, and is neither "Compatible with the existing residence" nor "In Harmony with the Neighborhood."

I have attached a more comprehensive series of comments highlighting the numerous issues with the proposal and reasons why the town should not approve this proposal. I have also attached a .pdf showing the Vision Government Solutions assessor database information for the existing property at 538 Portland St which lists the livable area at 924 sq feet, in excess of the 900 sq feet maximum in the permitting requirements.

I appreciate your review of these comments.

Thanks

Gene and Heidi Miller
59 Astilbe Lane

Total Control Panel

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Comments on Minor Site Plan – Accessory Dwelling Unit at 538 Portland St

The proposed project to add an Accessory Dwelling Unit at 538 Portland St is **substantially non-compliant with permitting requirements and should not be approved**. Below are the specific requirements the proposed project does not comply with:

1-The proposal is not consistent with the definition of Accessory Dwelling Unit of Accessory Structure in Chapter 701:

Accessory Dwelling Unit is defined as “a **secondary** dwelling unit that has been added onto or created within a single family home or an Accessory Structure.” An Accessory Structure or Use is defined as “A use of Structure which is **incidental and subordinate** to the principal use of Structure.”

The proposed ADU is currently the **primary** dwelling unit on the property. Simply re-designating this building an Accessory Structure is not viable as the building does not meet the definition of Accessory Structure – **it is neither incidental nor subordinate** to the principal structure. It is and has been the principal structure on the property for over 50 years. It is a two story building and not subordinate in any way to the proposed primary structure.

2-The proposal is not compatible with existing residence:

Permitting requirement (a) – “Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping and other methods that conform to acceptable construction practices”

Non-compliance:

The proposed project creates a situation where the existing residence on the lot (which is being designated the ADU) is not compatible with the proposed primary residence. The proposed ADU is 2 stories tall while the proposed primary residence is only 1 story tall. The proposed ADU is green, while the proposed primary residence is grey. The proposed ADU has vinyl siding, while the proposed primary residence has wood/clapboard siding in a serious state of degradation. The proposed ADU has was built in the architectural style of 1945, while the proposed primary residence was built in the style of 1978.

3-The exterior design is not in harmony with neighborhood

Permitting requirement (b) – “The exterior design is in harmony with, and maintains the scale of the neighborhood.”

Non-compliance:

The proposed project is grossly out of harmony and scale with the neighborhood. Issues include:

-The lot in question is 0.54 acres in size and not compliant with MDR zoning rules. The project proposes to add a driveway to Astilbe Lane in front of the new primary residence. All other houses on Astilbe lane are in compliance with MDR zoning rules. The addition of a second detached large structure on the non-conforming lot is substantially different from the surrounding neighborhood.

-The setback of the existing structure (to be designated the ADU) does not meet minimum setbacks. The addition of a second detached large structure at minimum set-backs is substantially out of harmony with the remainder of the Astilbe Lane neighborhood where all other structures meet, and in fact greatly exceed, minimum setbacks.

-The proposed new primary structure is substantially out of harmony with the rest of the neighborhood from an architectural style. The proposed primary structure reflects architectural designs of 1978, while all other houses in the neighborhood reflect architectural styles from the early 2000s. The new proposed primary structure would be the only single story building on Astilbe Lane. The proposed primary structure would also have different building materials (wood/clapboard siding vs vinyl siding) from the other properties.

-It appears from the site plan that the proposed new primary residence is actually located closer to the neighboring house than to the ADU.

4 – Entry doors and major windows are not limited to walls facing the primary residence. The design of the accessory unit does not relate to the design of the primary residence and is visually dominating the surrounding properties.

Permitting Requirement (e) – “Major access stairs, deck entry doors, and major windows will generally be limited to the walls facing the primary residence. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.”

Non-compliance:

-Major entry doors and windows are not generally limited to walls facing the primary residence. Only one of the walls faces the primary residence, and over 75% of the windows and both of the entrance doors do not face the primary residence. (Both entrance doors face Portland Street, in the exact opposite direction of the proposed primary residence).

-The design of the accessory unit does not relate to the design of the primary residence. The proposed ADU is 2 stories tall while the primary residence is only 1 story tall. The position of the ADU at the corner of Portland Street and Astilbe Lane, combined with its two story height, visually dominates the property and is not in any way sheltered or obscured by the primary residence. The ADU is in clear view from all angles of Portland and Astilbe lane and the surrounding properties.

5 – The orientation and location of the buildings does not maintain natural resources including significant trees and shrubs

Permitting Requirement (f) – “The orientation and location of the buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including...significant trees and shrubs to the extent feasible and minimize alteration of natural land forms”

Non-compliance:

-The proposed project has led to the elimination of numerous mature trees and shrubs along the property line. These were eliminated by the owner immediately prior to submitting the ADU application.

6 – The proposed Accessory Dwelling Unit is not compliant with setbacks

Permitting Requirements (j) – “Accessory Dwelling Units are not eligible for variances to setbacks”

Non-compliance:

The project proposes to re-purpose the existing primary residence as the ADU. The structure violates set-back requirements. Re-designating this non-compliant structure as ADU is in violation of the requirement that ADUs are not eligible for setback variances. Any grandfathering of variances to the set-backs should not carry over to the new designation, especially for a purpose that specifically forbids variances to set-back requirements.

7 – Owner does not occupy either the main residence or accessory unit

Permitting Requirements (k) – “Before obtaining a building permit for an ADU, the property owner shall file...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.”

Non-compliance:

-The owner does not presently occupy either the ADU or proposed primary residence. In addition, according to the Vision Government Solutions website with Yarmouth ME property appraisal information, the listed owner for 538 Portland Street is Two Towns Properties LLC. How is it possible for a LLC to “occupy” either the principal residence or ADU? Please verify and explain how the proposer is occupying either the ADU or main residence? What evidence of residency has the owner provided? Has the proposer provided a declaration of restrictions that includes a restriction that the use permit for the accessory unit shall be in effect only so long as the main residence, or the accessory unit, is occupied by the owner of record as the principal residence?

8 – Proposed Accessory Unit exceeds 900 square feet

Permitting Requirements (l) – “Units within an Accessory Structure shall not exceed 900 square feet.”

Non-compliance:

-Based on the applicant’s documentation, the property appears to be 916 square feet. The applicant appears to have arbitrarily subtracted floor space on the second floor that is usable and accessible but has a nominal ceiling height of less than 5’. Furthermore, according to the Vision Government Solutions Assessors on-line database, the proposed ADU at 538 Portland Street is listed at 924 square feet (finished living area, not including basement or porch). Both sources indicate the proposed ADU is in excess of the square footage requirements. (See attached pdf file for a copy of the Vision Government Solutions Assessors on-line database report for the existing property on 538 Portland St, which lists the living area at 924 sq feet).

9 – Not clear if the water and sewage facilities meet all existing laws and codes

Permitting Requirements (n) – “The water and sewage facilities shall meet all existing laws and codes”

Potential Non-compliance:

-Please verify that the water and sewage facilities meet all existing laws and codes? Is the intention to connect into the existing Astilbe Lane line and holding tank?

Summary

The proposed project has numerous and significant non-compliances with the permitting requirements for an ADU and the Town of Yarmouth **should not** approve this project.

538 PORTLAND STREET

Location 538 PORTLAND STREET

Mblu 030/ 014/ / /

Acct# 002278

Owner TWO TOWNS PROPERTY LLC

Assessment \$177,700

Appraisal \$177,700

PID 2253

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$58,300	\$119,400	\$177,700
Assessment			
Valuation Year	Improvements	Land	Total
2019	\$58,300	\$119,400	\$177,700

Owner of Record

Owner TWO TOWNS PROPERTY LLC
Co-Owner
Address 374 US ROUTE ONE
26 YARMOUTH, ME 04096

Sale Price \$170,000
Certificate
Book & Page 33291/ 32

Sale Date 07/15/2016
Instrument 00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
TWO TOWNS PROPERTY LLC	\$170,000		33291/ 32	00	07/15/2016
GREGOR THOMAS C JR & SHEILA M &	\$0		03947/ 062	1N	

Building Information

Building 1 : Section 1

Year Built: 1945
Living Area: 924
Replacement Cost: \$97,247
Building Percent Good: 60
Replacement Cost
Less Depreciation: \$58,300

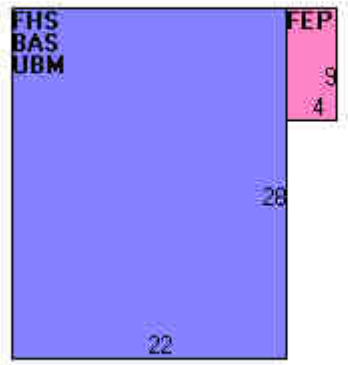
Building Attributes	
Field	Description
Style	Cape Cod
Model	Residential
Grade:	Below Average
Stories:	1.5
Occupancy	1
Exterior Wall 1	Vinyl Siding

Building Photo

 Building Photo
 (http://images.vgsi.com/photos/YarmouthMEPhotos/\00\00\15\18.jpg)

Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Flr 1	Hardwood
Interior Flr 2	Carpet
Heat Fuel	Oil
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	2 Bedrooms
Total Bthrms:	1
Total Half Baths:	0
Total Xtra Fixtrs:	3
Total Rooms:	6
Bath Style:	Average
Kitchen Style:	Standard

Building Layout



(http://images.vgsi.com/photos/YarmouthMEPhotos//Sketches/2253_2254)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	616	616
FHS	Finished Half Story	616	308
FEP	Enclosed Porch	36	0
UBM	Unfinished Basement	616	0
		1,884	924

Extra Features

Extra Features	Legend
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No Data for Extra Features

Land

Land Use		Land Line Valuation	
Use Code	1010	Size (Acres)	0.5
Description	Single Family	Frontage	
Zone	13	Depth	
Neighborhood	21	Assessed Value	\$119,400
Alt Land Appr Category	No	Appraised Value	\$119,400

Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$58,300	\$119,400	\$177,700
2018	\$58,300	\$119,400	\$177,700
2018	\$58,300	\$119,400	\$177,700

Assessment

5.10

Valuation Year	Improvements	Land	Total
2019	\$58,300	\$119,400	\$177,700
2018	\$58,300	\$119,400	\$177,700
2018	\$58,300	\$119,400	\$177,700

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From: JAYSHREE PATEL <jayshreeravi2000@yahoo.com>
Sent: Tuesday, July 27, 2021 3:31 PM
To: Erin Zwirko <EZwirko@yarmouth.me.us>; nciarmboli@yarmouth.me.us
<nciarmboli@yarmouth.me.us>
Subject: 538 Portland St

Dear Members of the Town Council,
My name is Jayshree Patel and I and my family live at 47 Astilbe Lane and I am writing to you today to raise our objection to Mr Ed Libby's plan to add Accessory Dwelling Unit(ADU) to the property on 538 Portland St. Our objection is based on multiple non conforming aspects of the property and proposal. Please find attached the reasons why we feel that the proposal doesn't meet town regulations. In changing his proposal from the CZ that was originally proposed to ADU, we feel Mr Libby is trying to circumvent the towns regulations and say they do not apply to him.
I would like to thank you all for taking the time to consider our objection to this proposal.

Jayshree Patel
47 Astilbe Lane.

Comments on Minor Site Plan – Accessory Dwelling Unit at 538 Portland St

The proposed project to add an Accessory Dwelling Unit at 538 Portland St is **substantially non-compliant with permitting requirements and should not be approved**. Below are the specific requirements the proposed project does not comply with:

1-The proposal is not compatibility with existing residence:

Permitting requirement (a) – “Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping and other methods that conform to acceptable construction practices”

Non-compliance:

The proposed project creates a situation where the existing residence on the lot (which is being designated the ADU) is not compatible with the proposed primary residence. The proposed ADU is 2 stories tall while the proposed primary residence is only 1 story tall. The proposed ADU is green, while the proposed primary residence is grey. The proposed ADU has was built in the architectural style of 1945, while the proposed primary residence was built in the style of 1978.

2-The exterior design is not in harmony with neighborhood

Permitting requirement (b) – “The exterior design is in harmony with, and maintains the scale of the neighborhood.”

Non-compliance:

The proposed project is grossly out of harmony and scale with the neighborhood. Issues include:

The lot in question is 0.54 acres in size and not compliant with MDR zoning rules. The project proposes to add a driveway to Astilbe Lane in front of the new primary residence. All other houses on Astilbe lane are in full compliance with MDR zoning rules. The addition of a second detached large structure on the non-conforming lot is substantially different from the surrounding neighborhood.

-The setback of the existing structure (to be designated the ADU) does not meet minimum setbacks. The addition of a second detached large structure at minimum set-backs is substantially out of harmony with the remainder of the Astilbe Lane neighborhood where all other structures meet, and in fact greatly exceed, minimum setbacks.

-The proposed new primary structure is substantially out of harmony with the rest of the neighborhood from an architectural style. The proposed primary structure reflects architectural designs of 1978, while all other houses in the neighborhood reflect architectural styles from the early 2000s.

-It appears from the site plan that the proposed new primary residence is actually located closer to the neighboring house than to the ADU.

3 – Entry doors and major windows are not limited to walls facing the primary residence. The design of the accessory unit does not relate to the design of the primary residence and is visually dominating the surrounding properties.

Permitting Requirement (e) – “Major access stairs, deck entry doors, and major windows will generally be limited to the walls facing the primary residence. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.”

Non-compliance:

-Major entry doors and windows are not generally limited to walls facing the primary residence. Only one of the walls faces the primary residence, and large windows and the main door are on walls that do not face the primary residence

-The design of the accessory unit does not relate to the design of the primary residence. The proposed ADU is 2 stories tall while the primary residence is only 1 story tall. The position of the ADU at the corner of Portland Street and Astilbe Lane, combined with its two story height, visually dominates the property and is not in any way sheltered or obscured by the primary residence. The ADU is in clear view from all angles of Portland and Astilbe lane and the surrounding properties.

4 – The orientation and location of the buildings does not maintain natural resources including significant trees and shrubs

Permitting Requirement (f) – “The orientation and location of the buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including...significant trees and shrubs to the extent feasible and minimize alteration of natural land forms”

Non-compliance:

-The proposed project has led to the elimination of numerous mature trees and shrubs along the property line. These were eliminated by the owner immediately prior to submitting the ADU application.

5 – The proposed Accessory Dwelling Unit is not compliant with setbacks

Permitting Requirements (j) – “Accessory Dwelling Units are not eligible for variances to setbacks”

Non-compliance:

The project proposes to re-purpose the existing primary residence as the ADU. The structure substantially violates set-back requirements. Re-designating this non-compliant structure as the ADU is in violation of the requirement that ADUs are not eligible for setback variances.

6 – Owner does not occupy either the main residence or accessory unit

Permitting Requirements (k) – “Before obtaining a building permit for an ADU, the property owner shall file...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.”

Non-compliance:

-The owner does not presently occupy either the ADU or proposed main residence. Please verify that the proposer is occupying either the ADU or main residence.

7 – Proposed Accessory Unit exceeds 900 square feet

Permitting Requirements (l) – “Units within an Accessory Structure shall not exceed 900 square feet.”

Non-compliance:

-Based on the applicant’s documentation, the property appears to be 916 square feet. The applicant appears to have arbitrarily subtracted floor space on the second floor that is usable and accessible but has a nominal ceiling height of less than 5’. Furthermore, according to the Vision Government Solutions Assessors on-line database, the proposed ADU at 538 Portland Street is listed at 924 square feet (finished living area, not including basement or porch). Both sources indicate the proposed ADU is in excess of the square footage requirements.

8 – Not clear if the water and sewage facilities meet all existing laws and codes

Permitting Requirements (n) – “The water and sewage facilities shall meet all existing laws and codes”

Potential Non-compliance:

-Please verify that the water and sewage facilities meet all existing laws and codes? Is the intention to connect into the existing Astilbe Lane line?

Summary

The proposed project has numerous and significant non-compliances with the permitting requirements for an ADU and the Town of Yarmouth **should not** approve this project.

Attachment 7

From: [Nicholas Ciarimboli](#)
To: [Wendy Simmons](#)
Subject: FW: 538 Portland Street
Date: Tuesday, July 27, 2021 9:02:39 AM
Attachments: [John Russell public comment - proof of non residence.docx](#)

From: Jefferson Oranellas <jefforanellas@gmail.com>
Sent: Monday, July 26, 2021 10:31 PM
To: Erin Zwirko <EZwirko@yarmouth.me.us>; Nicholas Ciarimboli <NCiarimboli@yarmouth.me.us>
Subject: 538 Portland Street

Good Evening,

I am writing in opposition of the proposed ADU project by Two Towns Property and it's acting agent Thomas F Jewel and the application signee Ed Libby. On behalf of the LLC company, Ed Libby filed an application to redesignate the existing house on the property as an ADU and move an existing house from another location to become the primary residence.

In permitting an ADU, there is cut and dry criteria pertaining to giving and maintaining an ADU permit of "principal residence" under section K of the application signed by Mr Libby,

It states under section K of the application that:

Before obtaining a building permit for an ADU the property owner shall file with the registry of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner 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 THE RECORD OF THE PRINCIPLE RESIDENCE.**
- d) The above declarations are binding upon any successors in ownership of the property

First off, Two Towns Property LLC has been used as a rental income property by the applicant's own tenant John Russell since 2018. John Russel spoke on behalf of Ed Libby as his long-time tenant during his CZA proposal which did not pass. (Public comments enclosed proving Ed does not live there and it's a rental). Ed has made it very clear he wants another house on the 538 Portland Street property for "affordable rental housing" options.

The permit application for an ADU specifically spells out primary residence of either unit is a must to "be in effect" as an ongoing concern. An ADU permit should not be granted to begin with as 538 Portland has not been used by Ed Libby as his primary residence at all. Not only are these residency rules put in place by the town of Yarmouth to follow, but they are also rules that are put into public state record with the registry of deeds that must be followed regarding primary residence on either

property that follows the deed in event of sale.

The application even states an ADU is only in effect "so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence. I did not see any "declaration of restrictions" for the Registry of Deeds with his Minor site ADU application. Was there a declaration by Ed that 538 is his primary residence that goes into the registry of deeds if approved?

538 Portland is not Ed Libby's primary residence, it's my feeling a permit should not be given to begin with as this property does not fit the permitting criteria of primary residence right out of the gate. For these reasons, I feel the application of an ADU at 538 Portland Street should be denied.

Since ADU's have a registry of deeds declaration stating that primary residence on the property is needed, which is governed by the State of Maine registry of deeds process as well as Yarmouth town application mandates, I feel there is really no middle ground or interpretation on this matter of primary residence rules. Since Ed doesn't live there, for that reason this project needs to be looked at from a code enforcement and legal "deed declaration" perspective and be denied.

Thank you for your time and consideration.

Regards,
Jefferson Oranellas

Thank you, Madame Chair. As I said, my name is John Russell. I teach English and co-chair the ELA department at our local public high school, where I also coach the Debate Team. I grew up in Yarmouth and graduated from YHS myself in 2005. Although I left town for many years after high school, I was so happy to return three years ago when my alma mater hired me. Since that time, my family and I have lived in the house that currently stands on the property in question at 538 Portland St., where we are Ed Libby's tenants.

Our move to Yarmouth three years go came a bit by surprise, and so I imagine none of you will be shocked to learn that our hunt for housing was unpleasant at best and terrifying at worst. Due to the size of our family and our financial situation, residing in Yarmouth pretty quickly revealed itself to be a non-option. My mother first moved my sister and me to town back in 1996, and the economics were challenging even then, but, thanks to her hard work, we were able to eke it out. As my wife and I prepared for our move, I imagined that, if a single mother had been able to make it work just a couple decades prior, living here would be within the realm of possibility for us and our two children.

In the end, I was right — it was possible — but only thanks to the kindness of Ed Libby. On a whim, we toured the property in which we now reside back in that summer of 2018, but his asking rate, while reasonable by town standards, was out of our range. We liked the place and thanked him for the tour but confirmed a few days later that we could not afford it. Within a matter of hours, Ed got back in touch with us and told us he wanted to make it work. It didn't feel right to him that a teacher in the Yarmouth School District should be unable to live comfortably in the same community as his students, and he wanted to do his part to help. He knocked a significant amount off the rent, and we gladly and humbly accepted.

In the time that has passed since, Ed has only built on that initial positive impression. He is always ready to help us, he is clearly committed to this town and to making it a welcoming place for all, and he is just overall a solidly good guy.

A couple months ago, before bringing the proposal in question before you, Ed talked it through with us. After all, the new structure would be literally right next door and on land that has felt like ours for some time now. As someone who works closely with the youth of this town, someone whose children attend Yarmouth schools, someone who was raised here myself, I know firsthand the value and power of diversity. I see how much readier for the real world today's graduates are than I was thanks to the way this town has changed since 2005. More families from a greater variety of backgrounds means more learning and greater understanding for those of us already lucky enough to call Yarmouth home. I hear so many folks around here pay lip-service to this idea, but I appreciate that Ed, with this proposal here, is actually doing something about it. That day Ed ran the idea by us, we gave him our unequivocal support, and we hope you will too.

From: psenger@maine.rr.com <psenger@maine.rr.com>
Sent: Monday, July 26, 2021 8:26 AM
To: Erin Zwirko <EZwirko@yarmouth.me.us>; nciarmboli@yarmouth.me.us
Cc: 'Rhonda S' <rsenger@maine.rr.com>
Subject: 538 Portland Street

Good morning Erin and Nick,

I am writing to you today regarding the proposal to add an ADU to 538 Portland Street. As a citizen of Yarmouth and close neighbor to this proposed project, I am adamantly opposed to this proposal based on several non-conforming aspects of the property and proposal. Please see attached concerns clearly showing how this proposal does not meet the town's regulations and should be outright rejected.

I hope that you take the time to review this proposal and see that it fails to meet the standards established for it to be passed.

Thank you for your time.

Sincerely,

Peter Senger
54 Astilbe Lane

Comments on Minor Site Plan – Accessory Dwelling Unit at 538 Portland St

The proposed project to add an Accessory Dwelling Unit at 538 Portland St is **substantially non-compliant with permitting requirements and should not be approved**. Below are the specific requirements the proposed project does not comply with:

1-The proposal is not compatibility with existing residence:

Permitting requirement (a) – “Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping and other methods that conform to acceptable construction practices”

Non-compliance:

The proposed project creates a situation where the existing residence on the lot (which is being designated the ADU) is not compatible with the proposed primary residence. The proposed ADU is 2 stories tall while the proposed primary residence is only 1 story tall. The proposed ADU is green, while the proposed primary residence is grey. The proposed ADU has was built in the architectural style of 1945, while the proposed primary residence was built in the style of 1978.

2-The exterior design is not in harmony with neighborhood

Permitting requirement (b) – “The exterior design is in harmony with, and maintains the scale of the neighborhood.”

Non-compliance:

The proposed project is grossly out of harmony and scale with the neighborhood. Issues include:

The lot in question is 0.54 acres in size and not compliant with MDR zoning rules. The project proposes to add a driveway to Astilbe Lane in front of the new primary residence. All other houses on Astilbe lane are in full compliance with MDR zoning rules. The addition of a second detached large structure on the non-conforming lot is substantially different from the surrounding neighborhood.

-The setback of the existing structure (to be designated the ADU) does not meet minimum setbacks. The addition of a second detached large structure at minimum set-backs is substantially out of harmony with the remainder of the Astilbe Lane neighborhood where all other structures meet, and in fact greatly exceed, minimum setbacks.

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-It appears from the site plan that the proposed new primary residence is actually located closer to the neighboring house than to the ADU.

3 – Entry doors and major windows are not limited to walls facing the primary residence. The design of the accessory unit does not relate to the design of the primary residence and is visually dominating the surrounding properties.

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4 – The orientation and location of the buildings does not maintain natural resources including significant trees and shrubs

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-The proposed project has led to the elimination of numerous mature trees and shrubs along the property line. These were eliminated by the owner immediately prior to submitting the ADU application.

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Non-compliance:

-The owner does not presently occupy either the ADU or proposed main residence. Please verify that the proposer is occupying either the ADU or main residence.

7 – Proposed Accessory Unit exceeds 900 square feet

Permitting Requirements (l) – “Units within an Accessory Structure shall not exceed 900 square feet.”

Non-compliance:

-Based on the applicant’s documentation, the property appears to be 916 square feet. The applicant appears to have arbitrarily subtracted floor space on the second floor that is usable and accessible but has a nominal ceiling height of less than 5’. Furthermore, according to the Vision Government Solutions Assessors on-line database, the proposed ADU at 538 Portland Street is listed at 924 square feet (finished living area, not including basement or porch). Both sources indicate the proposed ADU is in excess of the square footage requirements.

8 – Not clear if the water and sewage facilities meet all existing laws and codes

Permitting Requirements (n) – “The water and sewage facilities shall meet all existing laws and codes”

Potential Non-compliance:

-Please verify that the water and sewage facilities meet all existing laws and codes? Is the intention to connect into the existing Astilbe Lane line?

Summary

The proposed project has numerous and significant non-compliances with the permitting requirements for an ADU and the Town of Yarmouth **should not** approve this project.