



**PLANNING DEPARTMENT REPORT
YARMOUTH, MAINE**

Minor Site Plan

Accessory Dwelling Unit, 119-121 North Rd.

Anita & Kenneth Anderson, Applicant

Map 12, Lot 22

Prepared by: Planning and Development Department Staff

Date: October 20, 2023

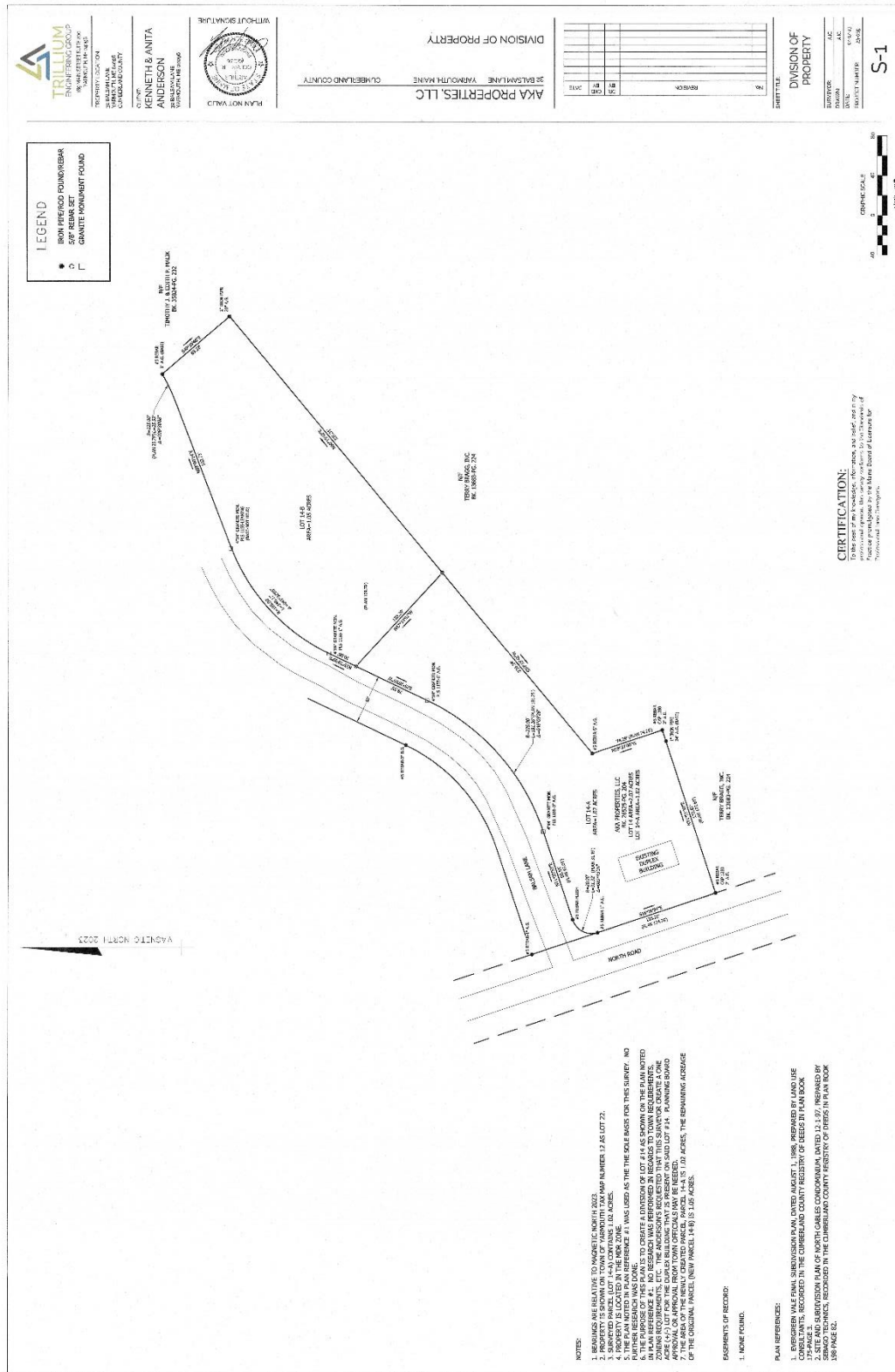
I. INTRODUCTION AND PROJECT DESCRIPTION

Anita and Kenneth Anderson propose to establish an accessory dwelling unit (ADU) on their property at 119 – 121 North Rd. per Chapter 702, Site Plan Ordinance. The applicant proposes to convert the existing Two-family Dwelling on the site into a Single-Family Dwelling with an ADU. The unit to be designated as the ADU is two stories and has two bedrooms, a bathroom, a kitchen, a living room, an attached one-car garage, and an unfinished basement. The total living area of the ADU is 823 SF.



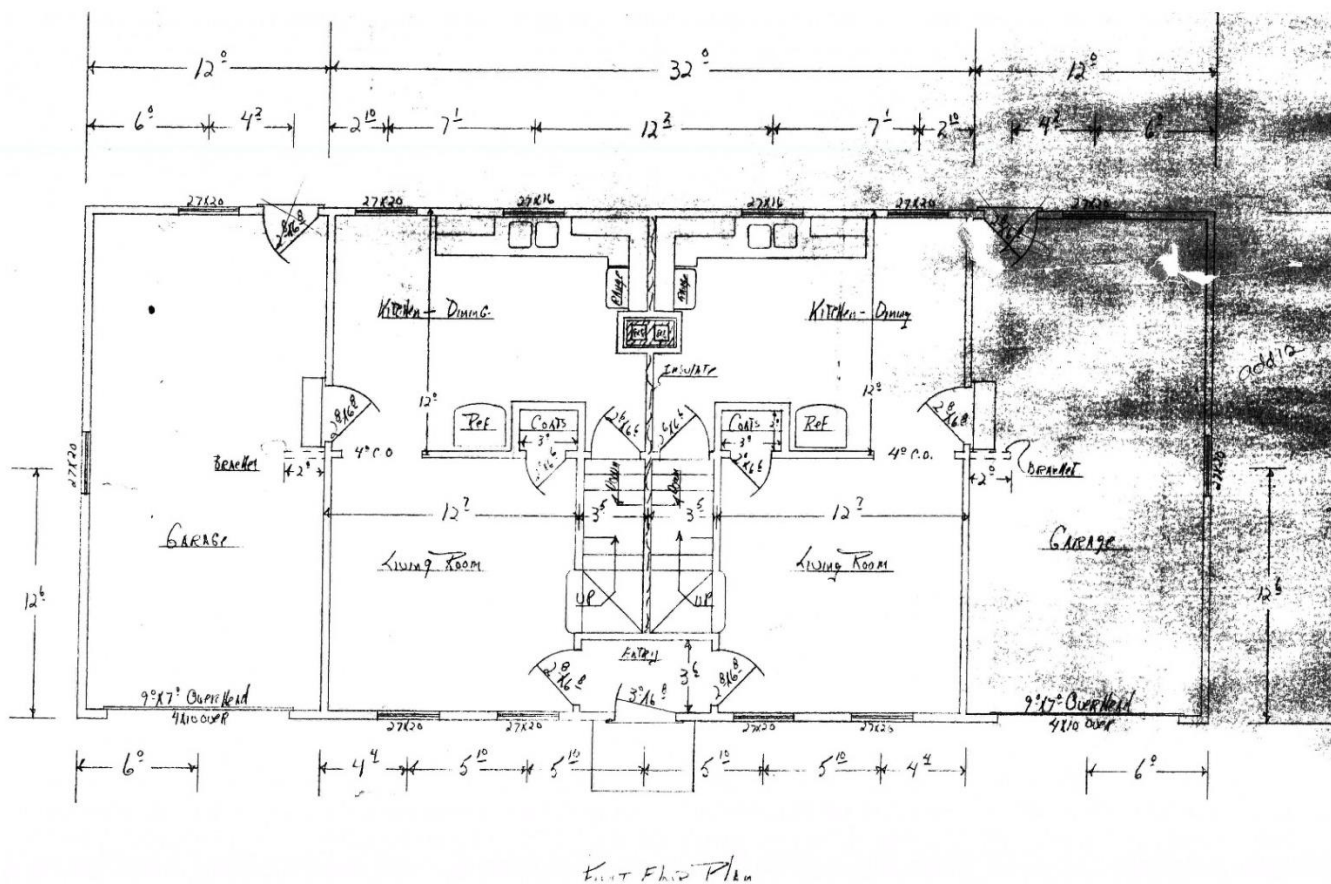
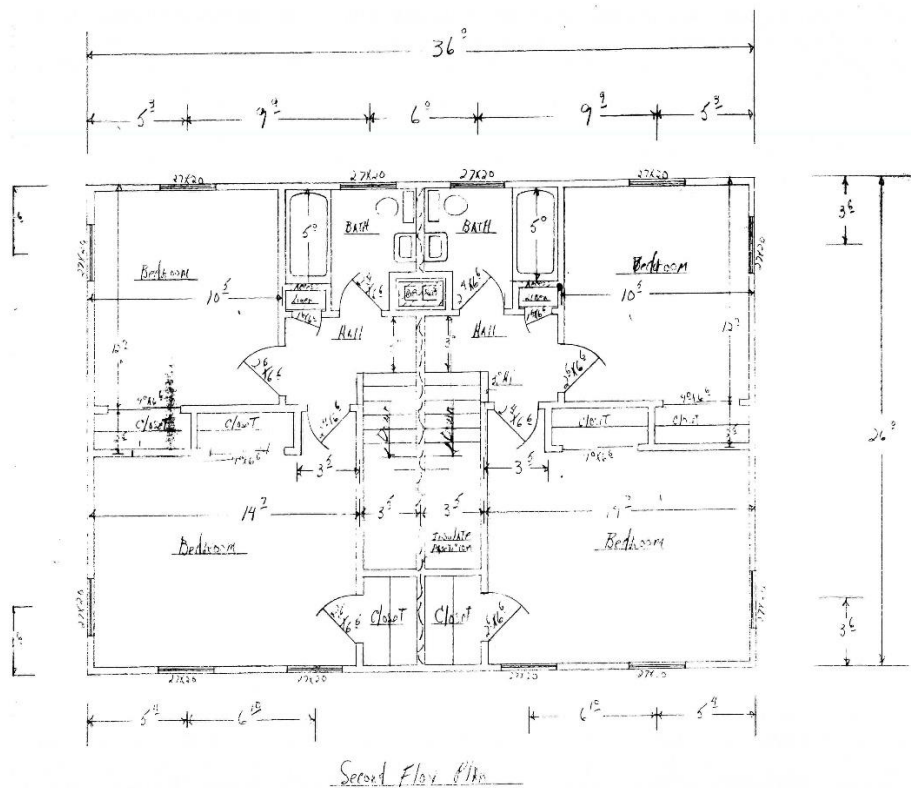
View of property and existing structure from North Rd. (Vision Database)

In the photo above, the primary dwelling unit is located beside the ADU. While the primary dwelling unit will maintain its expansion potential, the ADU will be limited to the restrictions of the CH. 702 Site Plan Ordinance.



Site Plan for 119-121 North Road

The existing structure on the site is a two-story, Two-family Dwelling from 1969 each with an attached one-car garage and a total living area of 1,668 square feet. The existing lot is approximately 2.07 acres. Access for the ADU will remain from an existing shared entrance that faces North Road.



Existing Floor Plans

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

| SUBJECT | DATA |
|------------------------|--|
| Existing Zoning | Medium Density Residential |
| Existing Use | Two-family dwelling with attached garages |
| Proposed Use | Single-family home with attached garages and ADU |
| Parcel Size | 2.07 acres |

Uses in Vicinity: The surrounding neighborhood consists of single-family homes originating from varying time periods, multi-unit townhouses, duplexes, an AMVETS post, and municipal facilities including the Public Safety Building, Public Works Garage and North Rd. Athletic Fields.

III. PUBLIC COMMENT

Notices of this public hearing were sent to 54 property owners in the vicinity (within 500 feet) of the proposed development. Three public comments were received.

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 full-size to scale site plan dating from 2023. The site plan shows items a – f, although the specific setback dimensions of the existing structure is not noted.

These were confirmed by Town Staff on the provided site plan as 29' +/- Front yard setback North Rd., 47' +/- Front yard setback Balsam Ln., 20' & 82' +/- Side yard setback. Item g., the date of construction, is not noted, but is provided in the application as 1969. Items h.-p. are provided. Item q., sewerage facilities are not noted, but the structure is connected to Town Sewer and no change is proposed to this service. Item r., Off-street parking is not indicated, but two garages are provided as well as ample driveway space in front of each garage to accommodate the required parking (*Note – This requirement has been removed to take effect in January 2024).

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: The existing structure is a two-story gable roofed side-by-side duplex with attached one-story garages. It is similar in massing, form, and overall exterior aesthetics to many vernacular colonial style houses in the area. No change is proposed to the existing structure.

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

Town Comments: The proposal does not alter the exterior design of the existing structure.

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

Town Comments: The proposed ADU should have no effect in this regard as no changes are proposed at this time.

- 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 structure is currently on Town Water and Town Sewer. There is no proposed change.

- 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 existing structure has a centralized vestibule entrance that faces North Road. No change is proposed to the entrance configuration. The ADU does not visually dominate the primary residence or surrounding properties.

- 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: There will be no change to the orientation of the building or trees on the property.

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

Town Comments: There will be no change 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: Each existing garage can accommodate one vehicle. In addition to the garage spaces, it appears that each driveway could accommodate two cars side-by-side or four cars in tandem which meets the current requirements of the ordinance. It is important to note that this requirement is eliminated under the amended ordinance to take effect in January of 2024.



- 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: As an existing Two-family Dwelling, the two units were built in conjunction with each other. As both units appear to meet the requirements of the ADU ordinance, it is the determination of the Town that one may be designated by the applicant as the principal dwelling unit with the other designated as the accessory dwelling unit. Future expansion of the designated ADU must comply with the applicable standard. If this project were to be proposed as new construction with two similarly sized units both meeting the ADU standards constructed in conjunction with one another, it is the Town's determination that this too would be permissible with the designation of one unit as an ADU and one as the principal dwelling. There is no standard that states one unit must be larger than the other. If this were the determinate for principal and

accessory, no metric has been established to quantify how much larger and thus is not a valid review criterion. Additionally, the intent of this ordinance is not to discriminate against smaller residences nor inhibit the continued use of existing structures and therefore the allowances of this ordinance shall be applicable to the current proposal.

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

Town Comments: The structure to be designated as the accessory dwelling unit is existing and will not obtain any variances for the location.

- 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: A deed restriction shall be filed in the Cumberland County Registry of Deeds to meet the requirements of this standard. It is important to note that the requirement for owner occupancy (c) is eliminated under the amended ordinance to take effect in January of 2024.

- 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 proposed ADU have a living area of 823 SF.

- 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 structure is served by Town Water and Town Sewer. No change is proposed.

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

Town Comments: Obtaining all other permits is 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 verbally relayed that the conversion would not require a sprinkler system and that he had no concerns.

- 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 existing structure has a centralized vestibule entrance that faces North Road. No change is proposed to the entrance configuration.

- 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 ADU is not in a garage or outbuilding. This standard is not applicable.

- 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: No nonconformities appear to exist on the lot.

- 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 two-family use and the proposed single-family use are conforming uses 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

It should also be noted, that some current ADU standards have been amended and these ordinance changes will take effect January 1, 2024. In particular, the requirement for owner occupancy has been eliminated. Additional action by the property owner may be required to amend the conditions of this approval in regard to these changes.

Based on the record, the Planning and Development staff believe that the Minor Site Plan Approval for an ADU at 119-121 North Road is consistent with the current standards of approval subject to the following conditions:

1. Proof of primary residence to include;
 - a. Driver's License or other recognized form of state or federal ID
 - b. a copy of a utility bill.
2. The property owner shall file with the Cumberland County Registry of Deeds the Declaration of Restrictions as outlined in Town of Yarmouth Ordinances Chapter 702 Article I.J.13.k. Evidence that the Declaration of Restrictions has been recorded in the Registry of Deeds shall be submitted to the Town. An example of the Declaration of Restrictions may be obtained from the Department of Planning & Development.
3. The applicant shall declare in writing which of the two units is the ADU. This information shall be provided to the Town and will be included in the Certificate of Occupancy.

Standard Conditions of Approval: Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Develop Site According to Plan:** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel shall require the prior approval of a revised site plan by the Planning Authority.
2. **Separate Building Permits Are Required:** This approval does not constitute approval of building plans, which must be reviewed and approved by Yarmouth Code Enforcement Officer.
3. **Site Plan Expiration:** The site plan approval will be deemed to have expired unless work has commenced within one year of the approval or within a time period up to two years from the approval date if approved by Planning Director as applicable. Requests to extend approvals must be received before the one year expiration date.
4. **Appeals:** The Director of Planning and Development's decisions regarding minor site plans are appealable by an aggrieved party to the Planning Board within 30 days of the date of the issuance of the decision. Site plan decisions of the Planning Board are appealed to the Cumberland County Superior Court.

Attachments

1. Staff Comment – Steve Johnson, Town Engineer – memo 10/10/23
2. Staff Comment – Erik Street, DPW Director – memo 10/16/23
3. Staff Comment – Dan Gallant, Police Chief – memo 9/66/23
4. Public Comment – Fred Hoffman – email 10/6/23
5. Public Comment – Timothy Malik – letter 10/5/23
6. Public Comment – Chris Roy – email 10/6/23

Submit Comments to Nick Ciaramboli by 10/12/23**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.: 9/8/2023

Agenda Date: N/A - Staff Review

Project Description: Minor Site Plan

Project Location: 119 North Road

Applicant: Anita and Kenneth Anderson

Agent/Contact: Anita Anderson - ala66@gwi.net

Project Description:

Accessory Dwelling Unit

ADU

No Comments

SV

10-10-2023

- ☐ Review For Completeness/Checklist
- ☐ Respond To Applicant Re: Completeness
- ☐ Staff Input/Request Sent:

1. Director of Public Works (full size)
2. **Town Engineer (full size)**
3. Fire Chief (pdf)
4. Police Chief (pdf)
5. Director of Community Svcs (pdf)
6. Yarmouth Water District (pdf)
7. Code Enforcement Officer (full size)
8. Town Manager (pdf)
9. Harbormaster (pdf)
10. School District (pdf)
11. Tree Warden (pdf)
12. Tree Committee (pdf)
13. Economic Development Director (pdf)
14. Planning Director (full size)
15. Assessor - Subdivision Only (pdf)
16. Bike & Ped Committee (pdf)
17. Parks & Lands Committee (pdf)
18. Historic Preservation Committee (pdf)
19. Traffic Peer Review - TYLin (pdf)

Date Completed:

9/14/239/14/239/26/23XXXXXXXX—X——XX————☐ Notice Letters Created/Sent☐ Agenda To PB☐ Agenda Posting:

1. Forecaster

2. Website

3. Bulletin Board

☐ Copy Of Findings And Decision In File

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Date Completed:

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☐ Copy Of Findings And Decision In File

~~NO~~
 NO
 Comments / concern's
 at this time
 Enid
 10-12-23

Wendy Simmons

From: Dan Gallant
Sent: Tuesday, September 26, 2023 4:57 PM
To: Wendy Simmons
Subject: Re: Request for Comment - 119-121 North Road - DUE 10/12/23

Wendy,

I have no comments for this application. Looks like they want to just change a duplex to an adu?

Think they were the folks who spoke out at a council meeting last month.

Thanks.

Dan

Daniel A. Gallant
Chief of Police
Yarmouth Police Department
178 North Road
Yarmouth, ME 04096
Phone: (207) 846-3333
Fax: (207) 846-2433

On Sep 26, 2023, at 14:56, Wendy Simmons <WSimmons@yarmouth.me.us> wrote:

For your review.

Thanks. Wendy

Wendy Simmons, SHRM-CP

Administrative Assistant
Planning, Code Enforcement & Economic Development

200 Main Street, Yarmouth ME 04096
207-846-2401
207-846-2438 - Fax
#

www.yarmouth.me.us

<image001.png>

<Notice of Filing-Request for Comment - 119 North Road.pdf>

<Application Combined.pdf>

<Site Plan.PDF>

Wendy Simmons

From: Nicholas Ciarimboli
Sent: Friday, October 6, 2023 3:56 PM
To: Wendy Simmons
Subject: FW: Minor Site Plan Application of Anita and Kennith Anderson for AUD, 119-121 North Road

-----Original Message-----

From: Fred Hoffman <frederick.hoffman@comcast.net>
Sent: Friday, October 6, 2023 3:54 PM
To: Nicholas Ciarimboli <NCiarimboli@yarmouth.me.us>
Subject: Minor Site Plan Application of Anita and Kennith Anderson for AUD, 119-121 North Road

Mr. Ciarimboli, I received in the mail yesterday the notice of the above application. I own and reside at 22 Gables Drive, the closest unit to the Applicant's property on the Drive. I had an opportunity to review the application this morning in detail and have some general questions to be referred to you per the notice. If I am reading the Application correctly, I don't have any objections at this time and certainly don't want to invade their privacy and reasonings for their Application. My questions are more to the purpose of an AUD, which I am not familiar with, and I wanted to get on record that I contacted you promptly since the 10 day public input period was not specified in the notice. I am not available for the rest of today but will be able to speak with you Monday between 9:00am and 2:00pm or at anytime thereafter next week at your convenience. I await your response. Fred Hoffman 248-770-8470.

Sent from my iPhone

Timothy J. Malik
67 Balsam Lane
Yarmouth, Maine 04096
Landline: 207.847.0506

October 5, 2023

Nicholas Ciarimboli
Building Inspector / Code Enforcement Office
Town of Yarmouth
200 North Street
Yarmouth, Maine 04096

RE: Minor Site Plan Application to Convert a Duplex into a Single-Family Residence
with ADU - 119-121 North Street

Dear Mr. Ciarimboli:

Thank you for your kind help with all my questions regarding the above application from Ken and Anita Anderson and their use of the ADU designation to convert their duplex at 119-121 North Street into a single-family home. I appreciate your insight into this request and the various other approaches they can take to split the two-acre duplex site into two single-family lots.

After further thought and consultation with neighbors, as well as Ken Anderson, I am still concerned that this approach is too quick and is flawed.

Converting a rental duplex into a single-family home with the second unit becoming an ADU seems highly inappropriate. The ADU definition in the Town's ordinances do not seem to provide for any such conversion. An administrative review is likely to reach the same conclusion.

The definition of an ADU (Article I, page 2 of the Zoning Ordinances) says that an ADU is an addition to an existing single-family home. That definition of a subsidiary structure does not confer the status of single-family home on an existing building. Reclassifying a duplex that had been constructed in 1969 as rental property and has been maintained as a rental property all these years is certainly bending reality. To change this structure into a single-family building, even though no additional changes to the structure will occur, is arbitrary and contrary to the intent of the Yarmouth ordinances. This is also troublesome since it will remove low-income rental housing from the market.

As you pointed out, the Town has taken some latitude with ADU designations in the past by allowing a second larger new house to be built on a site with an existing small home, and then allowing the smaller house to become an ADU. Although that was creative, a large single-family home was actually being constructed. In the Anderson's case, no residential square footage is being added to 119-121 North Street.

As a result, I recommend and request that the ADU application to designate 119-121 North Street as a single-family home with an ADU be denied.

As I discussed with Ken, we and our neighbors are willing to further help him with his attempt to legally split his two-acre lot (Lot 14) within a normal time frame if he can address our concerns in a way that permanently maintains the nature of our neighborhood.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Timothy J. Malik', with a stylized, looping flourish above the name.

Timothy J. Malik

Cc: Erin Zwirko, Director of Planning and Development
Norm Belanger, Esq., Counsel, Verrill Dana LLP

Erin Zwirko

From: Chris Roy <christophergordonroy@gmail.com>
Sent: Friday, October 6, 2023 11:49 AM
To: Nicholas Ciarimboli
Cc: Abigail Wolf; Erin Zwirko
Subject: 119-121 North Road ADU Proposal

Dear Mr. Ciarimboli,

We are residents of 102 Balsam Lane in Yarmouth and recently received notice of the proposed zoning change with respect to 119-121 North St, which abuts our homeowner association land. To designate a long standing duplex as a single family home with an ADU is inaccurate. It is a duplex by any reasonable interpretation. Per the definition of ADU, nothing has been "added onto" or "created within" a single family home. We believe this might be an attempt to split the lot into two one-acre lots for sale without consideration of our HOA.

In short, we hope that this designation change request is denied and that the lot remains designated as the duplex it clearly is.

Best regards,
Christopher and Abigail Roy
102 Balsam Ln