



Erin Zwirko, AICP, LEED AP  
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**TOWN OF YARMOUTH**  
200 Main Street, Yarmouth, Maine 04096  
[www.yarmouth.me.us](http://www.yarmouth.me.us)

**Date:** January 5, 2023  
**To:** Chair Holden and Members of the Yarmouth Planning Board  
**From:** Julie Dubovsky, Assistant Planner  
**Subject:** Substantial Modification of a Structure, Chapter 701, Article IX and X  
Review of Certain Contract Zone Agreement Conditions Applicable to Structure  
100 Bates Street, Map 44 Lot 108, Keith and Rachel Case, Owners and Applicants

**I. Project Description**

Rachel and Keith Case, owners of the property at 100 Bates Street, have submitted plans for substantial modifications of the existing residential building of 75 years or older and within the Demolition Overlay Zone. The project includes the following elements:

1. Removal of the original stable and replacement with a garage;
2. Replacement of windows with new 2/2 units;
3. Relocation/Addition of windows on the Bates St and north elevation;
4. Removal of two of the three chimneys; and,
5. Removal of a portion of the connecting mass on the second floor.

As part of the review of the Dunn Corner Subdivision as a Contract Zone by the Planning Board in 2018 and 2019, it was determined that historic preservation of the structure at 100 Bates Street qualified as a public benefit and would be included in a Contract Zone Agreement (CZA). The CZA restricted use and maintenance of the historic structure, and any alterations required third-party review by a qualified historic preservation consultant.

Although the house at 100 Bates Street is not in a locally designated historic district, it is a historic house designated by the Yarmouth History Center, known as the Josie Dunn House, and the proposed renovations are required to comply with a Contract Zone Agreement for the property. The current application's evaluation was provided by Essex Preservation Consulting, and included research to determine any existing historic designations to the property, an evaluation of the architectural significance of the house, and a review of the proposed renovations to determine if they are consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. Additionally, the Historic Preservation Committee met with the applicant on three occasions to review the proposal and the third-party evaluation.

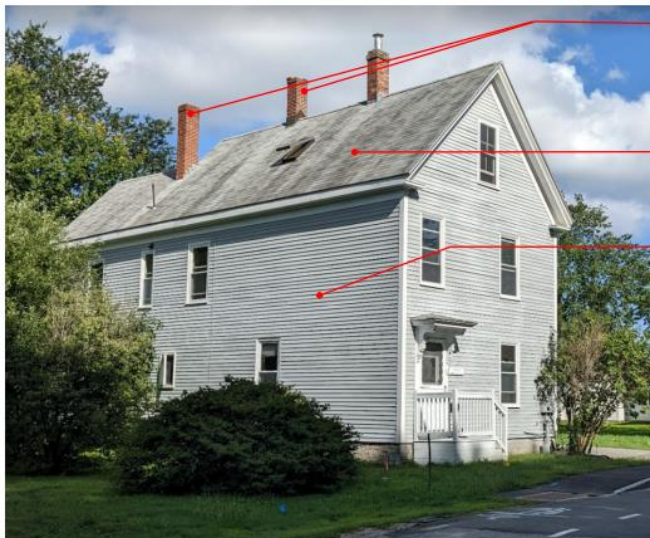
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Details on improvements have been provided in the application and are shown in the diagrams below:



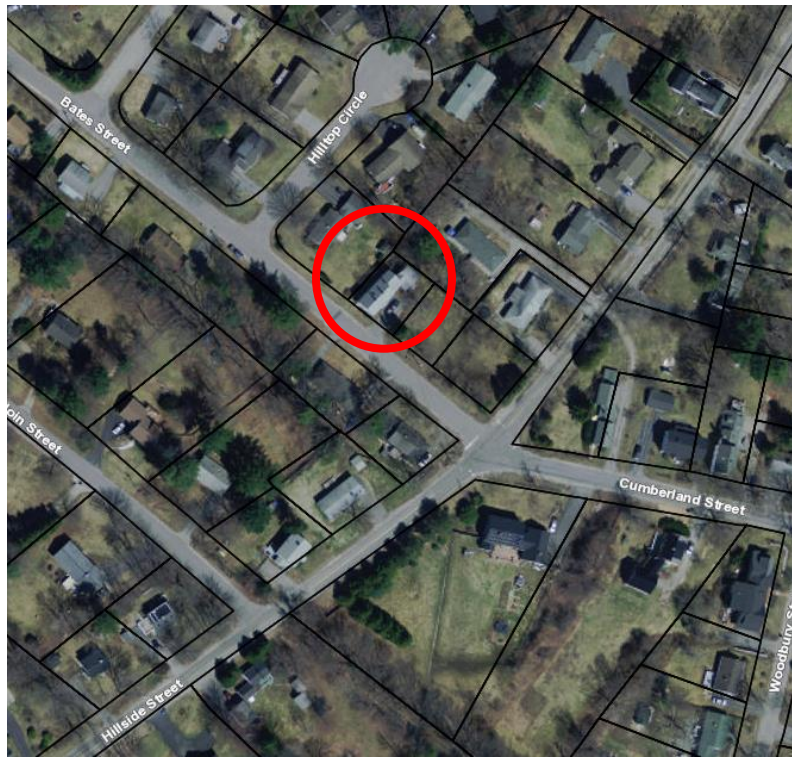
- New windows and trim at primary street elevation
- Remove 2nd floor connector infill to restore massing similar to original "house plus stable"
- Rebuild carriage house to function as a garage. Existing construction is leaning, and inspection report indicated insufficient foundation structure, lack of moisture or vapor control. Reorient roof slope to improve solar orientation for PV.
- New windows at previously enclosed porch
- Reduced width of asphalt driveway and replace with grass / planting

Improvements to West and South Facades



- Remove non-functional chimneys to improve envelope performance, reduce water infiltration, improve interior layout (2) locations. Retain and repair functioning chimney.
- Repair and reshingle roof
- Improve appearance of north elevation with new windows and trim
- New paint at exterior, repair rotten trim and sills, repoint foundation, typical

Improvements to North Façade and Roof



Property Location in Red (Town GIS Map)



Proposed Site Plan

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Existing West and South Facades



Proposed South Facade



Existing North and West Facades



Proposed North and West Facades

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## **II. Purview for Review**

These alterations constitute a Substantial Modification under the provisions of the Historic Building Alterations and Demolitions of Chapter 701 Article IX, which were enacted in April 2018. A Substantial Modification is defined as:

- a. removal or alteration of fifty (50 %) percent or more of the roof area and/or any exterior walls, or
- b. any portion of an exterior wall or roof area enfronting or facing and readily visible from a street or public open space

The property at 100 Bates Street, also known as the Josie Dunn House, is not within a locally designated historic district and it is not included as a Contributing Structure. This property is not on the National Register and has not been previously determined to be eligible for such listing. This does not mean that it is not eligible for listing, which is a determination by the Maine Historic Preservation Commission, but the report from the Essex Preservation Consulting found that it does not meet the National Register criteria for individual listing. There is a procedure for requesting the MHPC to make such a determination upon request, with property owner support, and that is one of the steps that can be taken during a demolition delay period.

The building is located in the Demolition Delay Overlay Zone (DDOZ) and is older than 75 years old, so it is assumed that the structure is a Building of Value under Chapter 701, Article IX, which is defined as “a building that has architectural, cultural, historical, or archaeological significance, contribution to an overall setting or streetscape, or otherwise of a character defining a particular area, neighborhood or streetscape.” The terms of Article IX cover buildings 75 years or older within the area depicted on the Demolition Delay Overlay Zone (DDOZ) attached to Article IX. The house is within the DDOZ, and was built around 1899, so it is subject to the demolition delay review provisions of Article IX. Demolition, as defined by Article IX, includes the conventional act of demolition as well as any Substantial Modification.

## **III. Public Comment**

Notices were mailed to 61 property owners within 500 feet of the property and notice was sent to the Town Council, Historic Preservation Committee, and Yarmouth Historical Society as required by Article IX. We have not received any public comments regarding the proposal.

The Historic Preservation Committee reviewed the application at their meetings on October 26, November 28 and December 19 of 2022, and found that, “the proposed Substantial Modifications retain and respect the remaining significant character defining features of the Property and will in fact enhance the historic streetscape of Bates Street and the adjoining Upper Village Historic District.” The committee recommended approval of the plans and specifications as filed, in addition to waiving the demolition delay period.

## **IV. Evaluation**

### **a. Historic Resource Survey**

In 2018, the Town commissioned a reconnaissance survey of properties in a defined study area which was general coincident with the area covered by the DDOZ map. The property at 100 Bates Street was outside of the study area and therefore not included in the survey.

### **b. Third-Party Evaluation by Historic Preservation Consultant**

Although the house does not currently have any local, state, or federal historic designations attached to the property, a historic plaque designates it as the “Josie Dunn House.” Built around 1899, the house still retains elements of vernacular New England architecture from 1870 to 1900. As part of a Contract Zone Agreement executed between the prior property owner and the Town in 2019, the preservation of the house was deemed a public benefit, and any exterior alterations or changes to the structure would require a Third-Party Evaluation by a qualified historic preservation organization, qualified historic architect or qualified historic preservation consultant to determine that alternations met the Secretary of the interior’s Standards for the Treatment of historic Properties.

For the proposed renovations, a third-party evaluation was conducted by Christine Beard, Principal Consultant at Essex Preservation Consulting. Based on the provided drawings, the consultant's determination was that the proposed renovations are consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, specifically the Standards for Preservation. As outlined in detail in Ms. Beard's letter dated November 17, 2022, "the Standards for Preservation require retention of the greatest amount of historic fabric along with the building's historic form, which has been accomplished in the plans for 100 Bates St."

**c. Article X. Contributing and Non-Contributing Structure**

As defined, a contributing structure retains its historic character and integrity, and contributes to the character of the district. Likewise, a non-contributing structure has had incremental changes over a period of years that have taken away from its architectural integrity. Changes include replacement doors, windows, siding and roofing as well as inappropriate additions that reduce the integrity of design, materials and workmanship.

The house at 100 Bates Street is not listed as a contributing structure and is located just outside of the Upper Village Historic District's boundary. However, the application shows local, historic, architectural precedents for the proposed renovations and designs that match existing historical features of the house. As a goal of the project is to "preserve/restore historic character," the proposed renovations also seek to remove the second floor connector infill to restore a massing similar to the original "house plus stable."

The Historic Preservation Committee recommended consideration of the building as a Building of Value under Chapter 701, Article IX.C due to "its architectural and historical significance, helping define the character of the neighborhood, and, through its adjacency to the nearby Upper Village Historic District."

**d. Dept. of the Interior's Standards for Rehabilitation of Historic Priorities and the Guidelines for the Treatment of Historic Properties**

Standards of Review are based on the U.S. Department of the Interior's Standards for Rehabilitation of Historic Priorities and the Guidelines for the Treatment of Historic Properties. The standards offer four distinct approaches to the treatment of historic properties: preservation, rehabilitation, restoration and reconstruction with Guidelines for each. In this case, guidelines for rehabilitation would be applied to acknowledge the need to alter the front façade to meeting changing uses while retaining the property's historic character. The standards of evaluation for reconstruction, renovation and alteration are in Article X, Appendix A4.2

**Relative Importance in History:** Documentation from the Yarmouth History Center shows that the parcel at 100 Bates Street was originally owned by the Chenery family and the house was built by Josephine Dunn (born Josephine Chenery) around 1899. Josie married into the local, prominent Dunn family, and inherited the property upon her parents' deaths. Since its construction, the house has retained its architectural integrity as an example of vernacular, New England Italianate architecture. The historic house marker program was established by the Village Improvement Society (VIS) and is continued today by the Yarmouth History Center to share historical information about properties throughout the Town and to encourage homeowners to preserve their distinctive older homes. The house at 100 Bates Street has a historic marker.



**Physical Condition:** Although the house was not included in the 2018 survey of historic structures, the building is considered in good condition. The applicant noted that an inspection found insufficient foundation under the "stable," which is causing the structure to lean, and lack of moisture or vapor control. The building has also been altered over time, with a skylight, asphalt shingles and modern vents added to the roof, three chimneys added at different times. Sanborn maps and photographs from the Yarmouth History Center also show that the principal dwelling structure was expanded between 1911 and 1944 to fill in the connector to the stable.

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**Proposed Use:** The building will retain its current residential usage. The currently enclosed side porch in the “connector” will feature new sliding and swinging doors, resembling more of a side porch, and the “stable” will be reconstructed to function as a garage.

**Mandated Code Requirements:** The Yarmouth Water District requires additional information from the applicant to determine if the proposed renovations have sufficient water to support a life safety system.

## **V. Yarmouth Design Manual**

As noted by the evaluation by Essex Preservation Consulting, the house is an example of the Italianate architectural style, with a gable-front and side entry form. Other character defining features of this style noted in the Yarmouth Design Manual, like the narrow building form, the bay window, large brackets supporting a projecting hood over the front door, and clapboard siding remain. Documentation from the Yarmouth History Center show that the overall footprint has not changed drastically over time either.

Small changes to the building form, materials, openings, and decorative details have been made over time. Sanborn maps and photographs from the Yarmouth History Center show that the principal dwelling structure was expanded between 1911 and 1944 to fill in the connector to the stable. Windows in this “connector” were evident on the second and first floor from Yarmouth History Center photo documentation from 1973, as shown in the application and below, and were removed afterwards. Material changes include asphalt shingles and modern vents added to the roof, and three chimneys added at different times.

The current proposal includes removal of two of the three chimneys, as shown below, as well as removal of the 2<sup>nd</sup> floor “connector” blank wall. Although the Design Manual discourages removal of historic chimneys, one of the three will remain, and the others are being removed to increase energy efficiency in the home. The Essex Preservation report also noted that, “the loss of the two rear chimneys does not have a major impact on the architectural integrity of the house,” as they appear to have been constructed at different times.

The proposal also includes removal of the existing stable and reconstruction as a garage. Although the Design Manual encourages the preservation of accessory buildings, like the stable, the application shows that the existing structure has structural damage due to an insufficient foundation. The Essex Preservation report notes that “despite the loss of the attached stable, the New England tradition of attached ell and barn will be maintained through the construction of the new period-sensitive garage.” As shown in the application package, the new garage will have a south facing roofline to support a solar array, a new transom window above the garage door, and a new window on the half story above the garage. Local, historic architectural precedents for this garage redesign were provided in the application.

## **VI. Building of Value**

The Historic Building Alterations and Demolitions ordinance requires the Planning Board to determine whether the subject building is a Building of Value, which is defined as follows: The term “Building of Value” is defined as *“a Building worthy of preservation, due to any of a variety of relevant considerations, including, without limitation, architectural cultural, historical or archaeological significance, contribution to an overall setting or streetscape, or otherwise of a character defining a particular area, neighborhood or streetscape, such that preservation would be deemed important to the maintenance of the character of such area, neighborhood or streetscape.”*

The house at 100 Bates Street is not listed as a contributing structure and is located just outside of the Upper Village Historic District’s boundary. However, the element of historic preservation in the Contract Zone Agreement and the designation as the “Josie Dunn House” by the Yarmouth History Center support the assumption that it is a Building of Value to the community. The Historic Preservation Committee recommended consideration of the building as a Building of Value under Chapter 701, Article IX.C due to “its architectural and historical significance, helping define the character of the neighborhood, and, through its adjacency to the nearby Upper Village Historic District.”

The Board may allow the modifications to proceed without delay, if the Board determines that the proposal meets the following standard:

*In the case of Substantial Modification, the Board may waive the delay period if it determines that the proposed design retains and respects the significant character defining features of the building. In such case, the waiver shall be predicated on approvals and permit issuance for the Substantial Modification plans.*

If the Board determines that the house is not a Building of Value due to its present state (which is not recommended due to the language in the ordinance and determination of the third-party review), the modifications can proceed after a 30-day stay, with notice to the Council and on the Town website of the decision to allow modifications to proceed on that basis.

## **VII. Recommendation**

Changes made to the structure's building form and facade have not drastically altered the building's architectural integrity. As a goal of the project is to "preserve/restore historic character," many of the improvements, such as tall and narrow new and repaired windows, a new clapboard enclosure at the bay windows, repairs to trim, and reconstruction of a "period sensitive garage," are compatible with the size, scale, material, and patterns of the original structure. The applicant's proposal removes some of the incongruous elements, particularly around the second-floor connector and enclosed side porch. As currently proposed, the design does respect the character defining features of the vernacular, Italianate style.

We are offering both Building of Value motions for the Board to consider, following the applicant's testimony, public comment, and Board deliberations. The two options are to impose a delay period to make revisions or alternative plans in accordance with Article IX or to allow the alterations to proceed as the design respects the character defining features without a delay period and with appropriate conditions. The Planning staff supports the applicant's proposal and recommend waiving the delay period (motion b).

As noted earlier, the Not a Building of Value Motion is not presented as the Structure is presumed to be a Building of Value due to its historic house marker designation by the Yarmouth History Center.

The applicant is also informed that the Town of Yarmouth posts a 23,000-pound weight limit for certain roads between February and April. Contractors will not be able to access the site with vehicles registered more than 23,000 pounds during this time. Permits are weather dependent, so the contractor is advised to plan accordingly.

## **VIII. Motions for Board Consideration**

Based on the public hearing, the Planning Board may proceed with one of the two following motions.

### **a. Building of Value Subject to Delay Provisions**

On the basis of the plans presented by the applicant, the testimony and public hearing, and the findings of Planning Staff Memo dated January 5, 2023 regarding the application of Chapter 701 Article IX, Historic Building Alterations and Demolitions, for the substantial modifications to 100 Bates Street, Map 44 Lot 108, Rachel and Keith Case, Applicant, the Planning Board finds that the structure is worthy of preservation, due to their architectural and historical significance, contribution to an overall setting and streetscape, and are of a character defining the particular area, neighborhood and streetscape, such that preservation is deemed important to the maintenance of the character of such area, neighborhood or streetscape and therefore is a Building of Value and are subject to the demolition delay provisions of Chapter 701 Article IX, that the substantial modifications shall be delayed for 180 days from the date of this decision, and the Town shall proceed with the measures called for in Article IX.9.b.i (1 through 4) as appropriate.

Such motion moved by \_\_\_\_\_, seconded by \_\_\_\_\_, and voted \_\_\_\_ in favor, \_\_\_\_ opposed, \_\_\_\_\_. (note members voting in opposition, abstained, recused, or absent, if any).

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**b. Design Respects Character Defining Features**

On the basis of the plans presented by the applicant, the testimony and public hearing, and the findings of Planning Staff Memo dated January 5, 2023 regarding the application of Chapter 701 Article IX, Historic Building Alterations and Demolitions, for the substantial modifications to 100 Bates Street, Map 44 Lot 108, Rachel and Keith Case, Applicant, the Planning Board finds that the proposed design retains and respects the significant character defining features of the building, and therefore waives the delay period, and allows that the substantial modifications proceed subject to Town Planning Authority approval with the following conditions:

1. The applicant shall coordinate with the Yarmouth Water District to determine the water service size to support domestic water service and the required sprinkler system per the Yarmouth Water District's comments dated December 29, 2022.
2. The applicant shall comply with the requirements of the Fire Chief as outlined in his memorandum dated December 29, 2022.
3. The applicant shall comply with the November 14, 2019, Contract Zone Agreement, and ensure that any fence erected, such as the +/-42-inch high fence and gate shown in the application, maintains open views of the Josie Dunn House from Bates Street, that existing and similar compatible landscape materials (such as street trees and screening of side property lines) may be maintained or installed which do not impede enjoyment of the view from the public rights-of-way, nor impede access to maintenance of drainage facilities and utilities within the drainage easement, per the 2019 Grading, Drainage and Erosion Control Plan.
4. The Armstrong Maple street tree recently planted to the west of the structure at 100 Bates Street shall be protected in coordination with the Yarmouth Tree Warden prior to any disturbance of site soils or vegetation. During construction, the applicant and their construction manager/contractor shall ensure that tree protection measures are maintained in good condition. The use of machinery, heavy foot traffic, storage of building materials, washing equipment, use of chemicals, and similar hazards should be avoided. The applicant and their construction manager/contractor shall ensure that crane mats are utilized wherever heavy equipment is expected to operate near the protected tree.
5. The applicant and their construction manager/contractor are prohibited from blocking Bates Street and the sidewalk during site preparation and construction.

Such motion moved by \_\_\_\_\_, seconded by \_\_\_\_\_, and voted \_\_\_\_ in favor, \_\_\_\_ opposed, \_\_\_\_\_. (note members voting in opposition, abstained, recused, or absent, if any).

**Attachments:**

1. Recommendation from the Historic Preservation Committee – 12/20/2022
2. No Comments from Steve Johnson, Town Engineer – 12/21/2022
3. Comments from Eric Gagnon, Yarmouth Water District – 12/29/2022
4. Comments from Michael Robitaille, Yarmouth Fire Department – 12/29/2022
5. Comments from Erik Street, Yarmouth DPW Director – 1/4/2023
6. Dunn Corner Subdivision Contract Zone Agreement, dated November 14, 2019

TOWN OF YARMOUTH  
HISTORIC PRESERVATION COMMITTEE  
Findings of Fact, Conclusions and Recommendation to Planning Board  
**100 Bates Street**  
**December 20, 2022**

1. The Committee finds that:
  - a. the 100 Bates Street Property is situated within the Demolition Delay Overlay Zone, but is not included in the Upper Village Historic District; and
  - b. the Property is a Building of Value under Ch.701, Art.IX.C. due to its architectural and historical significance, helping define the character of the neighborhood, and, through its adjacency, the nearby Upper Village Historic District; and
  - c. the proposed changes to the Property face onto and/or are visible from Bates Street and therefore constitute Substantial Modifications under Ch.701, Art.IX.B.2.
2. Having reviewed the application dated December 2, 2022 and supporting materials, including detailed drawings (original and revised) furnished by Applicant, and having engaged with Applicant in several meetings, the Committee has concluded that the proposed Substantial Modifications retain and respect the remaining significant character defining features of the Property, and will in fact enhance the historic streetscape of Bates Street and the adjoining Upper Village Historic District.
3. Based upon the foregoing;
  - a. the Committee concludes that the proposed Substantial Modification should be permitted to go forward in accordance with the plans and specifications as filed by Applicant, and
  - b. Recommends to the Planning Board that:
    - i. the Planning Board adopt the findings of the Committee set forth in Sections 1 and 2 above, and
    - ii. the application be approved, and
    - iii. the delay period provided for in Ch.701, Article IX be waived, predicated upon approvals and permit issuance for the Substantial Modification plans as heretofore filed by the Applicant and reviewed by this Committee.

Historic Preservation Committee  
By Bruce Butler  
Its Chairman

**Submit Comments to Erin Zavirko by 12/29/22****TOWN OF YARMOUTH****200 Main Street****Yarmouth, Maine 04096****(207)846-2401****Fax: (207)846-2438****NOTICE OF PLANNING DEPARTMENT FILING & REQUEST FOR COMMENT**

Date Rec'd.: 12/2/22

Agenda Date: 1/11/23

Project Description: Demolition Delay

Project Location: 100 Bates St.

Applicant: Keith &amp; Rachel Case

Agent/Contact: Keith Case - keithwcase@gmail.com

Project Description:

Exterior renovations to historic home.

*No CONCERNS*  
*12-21-2022*

- ☐ 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 Committee (pdf)
12. Economic Development Director (pdf)
13. Planning Director (full size)
14. Assessor - Subdivision Only (pdf)
15. Bike & Ped Committee (pdf)
16. Parks & Lands Committee (pdf)
17. Historic Preservation Committee (pdf)
18. Traffic Peer Review - TYLin (pdf)

Date Completed:

12/2/2212/2/2212/15/22XXXXXXXX  XXXX    X  

- ☐
- Notice Letters Created/Sent

- ☐
- Agenda To PB

- ☐
- Agenda Posting:

1. Forecaster

2. Website

3. Bulletin Board

- ☐
- Copy Of Findings And Decision In File

**From:** [Eric Gagnon](#)  
**To:** [Mike Robitaille](#)  
**Cc:** [Wendy Simmons](#); [Erin Zwirko](#); [Nicholas Ciarimboli](#)  
**Subject:** Re: 100 Bates Street  
**Date:** Thursday, December 29, 2022 9:08:57 PM

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Oh shoot, I was thinking this was for one of the new lots that was created a few years back. My apologies for not reading the submittals until after I hit send. I believe the existing water service for this building is 3/4" and not sure if even a short section of that would support the use of the life safety system. We would need to know the flow requirements by using the application that was attached in the previous email. Once we get that information in hand we can offer service options. Again, sorry for jumping the gun.

Eric Gagnon  
Superintendent  
Yarmouth Water District

**Our current work schedule is Monday through Thursday 7 am to 5 pm and I typically do not check my emails regularly outside of those hours.**

207.846.5821 phone

207.846.1240 fax

<http://YarmouthWaterDistrict.org/>

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On Thu, Dec 29, 2022 at 8:46 PM Eric Gagnon <[egagnon@yarmouthwaterdistrict.org](mailto:egagnon@yarmouthwaterdistrict.org)> wrote:  
Hi all,

There is an existing 1" water service that was installed to this lot before the life safety requirements were in place. We will be doing a fire flow test next week so the fire sprinkler system designers can determine the flow and size requirements for the life safety system. From what I have been told, a minimum of 1.5" line is required to adequately serve the life safety systems, which they can still adapt and increase to 1.5" on their side of the service line. I would inform the site contractor and the developer to hold off on attaching to the existing water service drop until the sprinkler designers have completed their calculations and for the District to ensure that the 1" connection to the water main is adequate. I have attached an application so we can understand the use of the building.

Eric Gagnon  
Superintendent  
Yarmouth Water District

**Our current work schedule is Monday through Thursday 7 am to 5 pm and I typically do not check my emails regularly outside of those hours.**

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On Thu, Dec 29, 2022 at 11:24 AM Mike Robitaille <[MRobitaille@yarmouth.me.us](mailto:MRobitaille@yarmouth.me.us)> wrote:

Please see attached regarding 100 Bates Street.

*Michael S. Robitaille*

*Chief of Department*

*Yarmouth Fire Rescue*

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**From:** Wendy Simmons <[WSimmons@yarmouth.me.us](mailto:WSimmons@yarmouth.me.us)>

**Sent:** Thursday, December 15, 2022 11:01 AM

**To:** Andrew Dolloff <[andrew\\_dolloff@yarmouthschools.org](mailto:andrew_dolloff@yarmouthschools.org)>; Dan Gallant <[DGallant@Yarmouth.me.us](mailto:DGallant@Yarmouth.me.us)>; Eric Gagnon <[egagnon@yarmouthwaterdistrict.org](mailto:egagnon@yarmouthwaterdistrict.org)>; Erik Donohoe <[edonohoe@yarmouth.me.us](mailto:edonohoe@yarmouth.me.us)>; Karyn MacNeill <[kmacneill@yarmouth.me.us](mailto:kmacneill@yarmouth.me.us)>; Lisa Small <[small.elizabeth@gmail.com](mailto:small.elizabeth@gmail.com)>; Mike Robitaille <[MRobitaille@Yarmouth.me.us](mailto:MRobitaille@Yarmouth.me.us)>; Mike Tremblay <[mtrem225@gmail.com](mailto:mtrem225@gmail.com)>; Nat Tupper <[ntupper@Yarmouth.me.us](mailto:ntupper@Yarmouth.me.us)>; Ron Dupuis <[fish\\_doc12@comcast.net](mailto:fish_doc12@comcast.net)>; Scott LaFlamme <[slaflamme@yarmouth.me.us](mailto:slaflamme@yarmouth.me.us)>

**Subject:** Request for Comment - 448 Pemasong Lane, 95 Sea Spray Reach, 100 Bates St. - DUE 12/29

For your review:

[https://yarmouth.me.us/index.asp?SEC=629E1BD4-C041-417B-BBBD-FE8E3715114C&DE=07DB6C45-9819-45CA-B3B9-323085081B30&Type=B\\_BASIC](https://yarmouth.me.us/index.asp?SEC=629E1BD4-C041-417B-BBBD-FE8E3715114C&DE=07DB6C45-9819-45CA-B3B9-323085081B30&Type=B_BASIC)

Thanks. Wendy

Wendy L. Simmons, SHRM-CP (she, her, hers)

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](http://www.yarmouth.me.us)



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



MICHAEL ROBITAILLE, CHIEF OF DEPARTMENT

BILL GODDARD, DEPUTY CHIEF

TO: Erin Zwirko, Town Planner  
CC: Nicholas Ciarimboli, Code Enforcement Officer  
Subject: 100 Bates Street

On December 29, 2022, I reviewed the application submitted by Keith and Rachel Case for demolition and construction at 100 Bates Street. The following is required based on National Fire Protection Standards and local municipal ordinances.

- Interconnect smoke detectors are required
- Carbon Monoxide detectors are required to be installed
- Gas Detectors for the purpose of detecting natural gas, propane, fuel or any liquified petroleum gas will be required in any room that has appliances supported by these fuels.

***Title 25, Chapter 317, Section 2469***

- In accordance with Chapter 317 of the Yarmouth Ordinance, a sprinkler system, will be required to be installed. Plans are required to be submitted to the State Fire Marshalls Office for approval.
- The Yarmouth Water District must approve the water rates and connections for the sprinkler system.
- House numbers are required and must be visible from the road if within 50 feet of road. If the home is greater than 50 feet, the applicant will be required to have 4" numbers at the entryway of the road.

Sincerely,

*Michael Robitaille*

Michael Robitaille  
Fire Chief

Town of Yarmouth ME

Director of Public Works

## MEMORANDUM

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

**From:** Erik S. Street, Director of Public Works 

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

**Date:** 1/4/22

**Re:** 100 Bates Street – Demolition Delay

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After reviewing the project, I have the following comments.

1. There is a 10' drainage easement across the property. While the drainage structure and easement are private, the owner should be aware that the system may need to be maintained /repaired at some point in the future. The proposed site plan shows a fence and a portion of the paved driveway inside the easement area. Owner should just be aware that the driveway and fence may be impacted, should maintenance or repairs be required.
2. Hillside and area streets will be posted with 23,000lbs weight restrictions beginning sometime in February, and running into mid-April. Actual dates are dependent on weather conditions. Access to the site with vehicles registered over 23,000lbs will not be permitted without a Town permit. Permits will only be issued if weather conditions allow. Owner and contractor should be aware that accessing this site with large vehicles during this time could be challenging and they should plan accordingly.
3. During construction, contractors are not allowed to block the street or sidewalk.

If you have any questions, please let me know.

**Dunn Corner Subdivision  
Hillside & Bates Streets– 3 Lot Subdivision  
CONTRACT ZONE AGREEMENT**

This Agreement made this 14<sup>th</sup> day of Nov., 2019 by and between the Town of Yarmouth, Maine, a municipal corporation with a place of business at 200 Main Street in Yarmouth, County of Cumberland, State of Maine (hereinafter the "TOWN") and Ed Libby with a mailing address of 374 Route One, Yarmouth, Maine 04096 (hereinafter, the "OWNER").

**WITNESSETH:**

**WHEREAS**, Ed Libby is the OWNER of a certain parcel of land designated as Map 44 Lot 108 of the Assessor's tax maps of the Town of Yarmouth, Maine comprising an approximate total of 17,252 square feet of land with the buildings and improvements thereon at 100 Bates Street in Yarmouth, Maine, ("the Parcel") and OWNER proposes to divide the Parcel into three lots for residential uses, and

**WHEREAS**, pursuant to Title 30-A MRSA, Sections 4352(8) and 4314 (3.E), and Chapter 701, Article IV, Section V. of the Yarmouth Town Code, application was made for contract zoning authorization; and application been submitted along with a subdivision plan pursuant to Chapter 601 of the Yarmouth Town Code, and

**WHEREAS**, the Yarmouth Comprehensive Plan declares that returning to the historic pattern of development and providing a diversity of housing opportunities will require that the Town allow higher density/intensity of use, that infill development that reinforces the Village character and historic density of development should be encouraged, and that accommodating additional residential uses in the neighborhoods surrounding the Village Center are key to Yarmouth's identity as a livable, walkable, intact historic town, and that these are all valued objectives that offer public benefits and so should be actively encouraged by the Town to further the health, safety and welfare of the community, and

**WHEREAS**, the 2010 Comprehensive Plan of the Town of Yarmouth embraces goals and strategies to promote well-designed infill development to occur at density, scale, form and disposition that is compatible with the historic pattern of development, to allow property owners in these neighborhoods to have flexibility to use their properties creatively as long as the use is compatible with the neighborhood and new development standards are satisfied, and to utilize contract zoning to allow for the development of special projects on a limited basis that are consistent with the Future Land Use Plan, and

**WHEREAS**, the Town has identified this area as a growth area being more suitable for growth because it can be conveniently served by public facilities and services, is physically suited for development, and promotes a compact rather than sprawling development pattern, and the

Parcel lies within the targeted “Growth Area” described in the Comprehensive Plan, and

**WHEREAS**, the Town Council established an Economic Development Advisory Board (EDAB) to advise the Council and community on strategies to support appropriate economic development in Yarmouth, and the EDAB, through its Planning Decisions Report, has recommended increased residential development within a few blocks of Main Street as a strategy to contribute toward a more vibrant downtown, and

**WHEREAS**, pursuant to Chapter 701 Article IV(H), the proposed use is permitted in the Medium Density Residential (MDR) zone in which this project is proposed, and there already exists on the Parcel one residential building, demonstrating that the proposed use is not inconsistent with existing and permitted uses in the MDR zone, and this Agreement contains conditions and restrictions that relate to the physical development of the property, namely the ability to construct a single family dwelling on each of the proposed lots “A” and “B” with specific dimensional lot standards, landscape standards, and architectural standards; and

**WHEREAS**, the Yarmouth Town Council seeks to promote energy efficient building techniques, renewable energy, energy conservation, and sustainability, and ordained at its May 17, 2018 meeting to establish a Renewable Energy and Sustainability Advisory Committee (the “RESAC”) to facilitate and carry out programs relating to renewable energy, energy conservation and sustainability, disseminate information to residents about sustainability options, and make recommendations to the Town Council for energy conservation and renewable energy projects,

**WHEREAS**, the proposed addition of 2 new house lots referred to herein as the Dunn Corner Subdivision presents such a potential public benefit consistent with the objectives of the Town Council and the purposes and goals of the Comprehensive Plan by providing well designed high-quality infill homes built to high energy efficiency standards, within walking distance to the Village Center, and

**WHEREAS**, the project will advance the public good by the use of high quality, durable and historically appropriate materials and details in any rehabilitation, landscaping, and new construction to ensure that the historic quality and character of the existing building, all landscape treatments, and any new buildings reflect the scale, form and disposition of the surrounding neighborhood which will be enhanced by the proposed development; and

**WHEREAS**, the Town's 2010 Comprehensive Plan endorses the preservation of Historic Structures as a benefit for the common good, and the Village Improvement Society has documented the Historic Significance of the existing house on the Parcel (Josie Dunn House, c. 1899), and OWNER agrees to preserve said house as a public benefit; and

**WHEREAS**, the project will advance a public interest by including an obligation of the applicant to provide a public benefit by designing and constructing a private drainage system to help alleviate offsite flooding of basements, yards and roadways in the vicinity of Hilltop St. and the

Bates St. and Hillside St. intersection, and

**WHEREAS**, the Planning Board, pursuant to Section IV(V)(5) of the Zoning Ordinance, and after notice and hearing and due deliberation thereon, recommend the rezoning of the Parcel as aforesaid, and

**WHEREAS**, the parties mutually agree to the terms and conditions of the development plan in the aforesaid Subdivision Plan.

**NOW, THEREFORE**, in consideration of the authorization of the Yarmouth Town Council to modify and/or waive the general standards of development in the Medium Density Residential Zoning District, specifically to allow the creation of three lots comprising the Dunn Corner Subdivision such that the proposed development will not meet required minimum standards relative to minimum lot size, minimum lot width, and setback standards, as of the MDR zone, the TOWN and OWNER agree as follows:

**1. GENERAL CONDITIONS**

The OWNER, for itself, heirs, its successors and assigns hereby covenant and agree that the use, occupancy and/or development of the subject premises will, in addition to other applicable provisions of law, ordinance or regulation, be subject to the following restrictions and conditions on the physical conditions on the development or operation of said premises:

- a) The development of Dunn Corner Subdivision shall be limited to and controlled by all plats, conditions, notations, restrictions, understandings were voted or imposed by the Planning Board on its October 23, 2019 vote for final approval of the Subdivision Plan, and any amendments thereto that the Planning Board may, upon application, vote to authorize or establish, said approved Subdivision Application including all referenced and incorporated profiles, Exhibits, attachments, landscaping, buffering, lighting, building design and material plans, color schemes and other project specifications relied upon by the Yarmouth Planning Board in granting final approval of the subdivision are hereby incorporated by reference and become a part of this Agreement.
- b) The development shall be limited in use to uses now or in the future are permitted uses within the current zone and uses permitted accessory thereto. All structures and uses described in the Subdivision Plan approval shall be subject to the procedures and covenants of this Agreement as hereinafter described.
- c) All portions of the premises identified on the Subdivision Plan approval plats approved by the Planning Board as public facilities, easements and rights-of-way shall be dedicated and reserved as such in perpetuity.
- d) The Parcel may not be re-subdivided nor changed to another use not contemplated

herein without the approval of the Yarmouth Planning Board.

- e) The dimensional standards regulating this development are modified as follows:

Applicable Development Standards in lieu of Chapter 701 Article IV (H)

- |                                     |   |
|-------------------------------------|---|
| • Minimum Lot Width                 | 60 ft   |
| • Minimum Lot Size                  | 4800 sf   |
| • Building Height                   | 35 ft   |
| • Side yard setback                 | 10 ft   |
| • Side setback (Outbuildings)       | 0 ft  |
| • Front Yard Setback (Primary)      | 6 ft  |
| • Front Yard Setback (porch, stoop) | 0 ft  |
| • Front Yard Setback (Secondary)    | 6 ft  |
| • Rear Yard setback                 | 3 ft  |
| • Rear Yard setback (outbuildings)  | 0 ft  |
| • Frontage Build-out                | Min 30%, Max 75%  |
| • Front Setback Outbuildings        | Primary setback plus 20 ft  |
| • Parking setback                   | Primary setback plus 20 ft  |
| • Parking Spaces Required           | 1-2 per dwelling unit   |
| • Maximum Lot Coverage              | 60%   |
| • Architectural Standards           | The provisions of Ch. 703 (Character Based Code), Article 5 (M) shall apply |
| • Landscape Standards               | The provisions of Ch. 703 (Character Based Code), Article 5 (N) shall apply |

For the purposes of these Applicable Development Standards, the definition of terms shall be as per Chapter 703 of the Yarmouth Town Code (Character Based Code).

- f) The applicant shall construct a private storm water drainage system as approved by the Town Engineer and the Yarmouth Planning Board to address offsite neighborhood drainage issues consistent with a preliminary design attached to the Planning Board submissions as Exhibit 5.
- g) The applicant, including his heirs, successors or assigns, hereby covenant and agree that the use, occupancy and/or development of 100 Bates Street, Yarmouth, will, in addition to other applicable provisions of law, ordinance or regulation, be subject to the following restrictions and conditions on the use and maintenance of the historic structure:
- i. Owner shall preserve the Josie Dunn House providing that the significant exterior historic architectural features and details of the property shall be preserved and

protected in conformance with the Secretary of the interior's Standards for the Treatment of historic Properties, maintained by the National Park Service, or such guidelines or documents which may succeed the aforementioned "Secretary's Standards", and prior to undertaking any exterior alterations or changes to the historic structure shall engage through the Town at owner's sole expense a Third Party Evaluation by a qualified historic preservation organization, qualified historical architect or qualified historic preservation consultant who shall determine that these proposed alterations meet these Standards or make recommendations for modifications to the alterations so that they would meet the Standards, which recommendations shall be carried out.

- ii. Owner shall preserve and protect open views of the Josie Dunn House from Bates Street, specifically not erecting accessory structures, continuous fencing or hedges. Existing and similar compatible landscape materials (such as street trees and screening of side property lines) may be maintained or installed which do not impede enjoyment of the view from the public rights-of-way, and
- iii. In the event of fire or other disaster which destroys less than 50% by reproduction cost of the original structures, Owner shall restore the Josie Dunn House after engaging through the Town at owner's sole expense a Third Party Evaluation by a qualified historic preservation organization, qualified historical architect or qualified historic preservation consultant who determines this restoration to be in keeping with its prior architectural design, and
- iv. In the event of fire or other disaster which destroys more than 50% by reproduction cost of the structures, Owner shall engage through the Town at owner's sole expense a Third Party Evaluation by a qualified historic preservation organization, qualified historical architect or qualified historic preservation consultant, who determines this reconstruction to be in keeping with its prior architectural design.

## **2. TERM**

The term of this Agreement shall be from the date first named above until terminated or modified by the parties hereto, their successors or assigns, or until it expires subject to paragraph c) below.

- a) Upon the termination of this Agreement, all lawfully existing development and activity on the premises may continue as an existing non-conforming use under the laws and regulations then in effect, but may not be enlarged, increased or extended except as provided generally for non-conforming uses at that time.
- b) Nothing herein shall be construed to terminate or extinguish any terms, provisions, covenants, or warranties expressed or implied in any instrument of title, deed, or

ownership involved in or arising out of this development project. All such terms, provisions, covenants or warranties, which are not inconsistent with the terms of this Agreement, shall survive the expiration of this Agreement, as applicable.

- c) The provisions of Chapter 701 Article IV, (V) (10) regarding time frame for filing of a complete application for final subdivision review apply. In the event that the OWNER or its successors and assigns do not commence construction of the Dunn Corner Subdivision within 5 years of the effective date of this Agreement, this Agreement will be deemed expired and the property shall revert to its former designation, unless prior to such expiration, this Agreement is extended for not more than one additional five- year period by vote of the Yarmouth Planning Board.

### **3. SPECIAL CONDITIONS**

- a) Design features, architecture, and landscaping: This Agreement is entered into and established to allow the development of one Single Family housing structure on each proposed new lot. All plat notations, requirements, policies, procedures, covenants, terms, and warranties for such features as shown on the Subdivision Plans and all Submittals and Exhibits filed with the Planning Board and relied upon for review and approval of the Subdivision Application as approved or established in the Planning Board's conditions of approval are of essence in this agreement, and failure to install, maintain, construct, or abide by such conditions in a timely, prudent, and workmanlike fashion shall be considered a breach of this agreement. The intent being that taken together, the Town is assured that in all cases the buildings will conform to these conditions.
- b) The Josie Dunn house is currently used and dedicated as a single-family residential structure and shall not be used or occupied as a two-family whether attached or detached in the future. Notwithstanding any provisions of Chapter 701 to the contrary, no accessory dwelling unit shall be built, used or occupied on the premises.
- c) The new lots to be created by subdivision authorized under this Contract Agreement and Planning Board approval may each be developed, used and dedicated as a single-family residential structure and permissible accessory structures and uses thereunder, and shall not be used or occupied as a two-family whether attached or detached in the future. Notwithstanding any provisions of Chapter 701 to the contrary, no accessory dwelling unit shall be built, used or occupied on the premises.
- d) The existing Bates Street frontage along Tax Map 44 Lot 108 includes a row of mature trees. In the event that any of the trees are substantially damaged or removed as a result of construction of new homes or drives, installation of a

sidewalk, drainage system or installation of utilities, applicant shall replace said trees by planting new deciduous shade trees of a minimum 1.5 inch caliper along the Bates Street frontage and shall maintain and guarantee survival of said replacement trees for a period of not less than 3 years.

#### **4. BREACHES AND ENFORCEMENT**

- a) The OWNER hereby agrees that the above stated restrictions, provisions, conditions, covenants and agreements, including all conditions of approval and restrictions incorporated herein by attachment or reference, are made an essential part of this Agreement, shall run with the subject premises, shall bind the OWNER, its heirs, successors and assigns, to or of said property or any part thereof or any interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of, and be enforceable by, the TOWN, by and through its duly authorized representatives.
- b) The OWNER hereby agrees that if it, or any person claiming under or through it, shall at any time violate or attempt to violate, or shall omit to perform or observe any one or more of the foregoing restrictions, provisions, conditions, covenants, and agreements, the TOWN shall have, without limitation, the following remedies, which may be exercised by the TOWN.
  - i. The Town of Yarmouth shall have the right to prosecute violations of this Agreement against the OWNER committing the violation in the same manner that it is authorized to prosecute violations under the Zoning Ordinance of the Town of Yarmouth in effect at the time of said violations. For the purposes herein, a violation of this Agreement shall be deemed a violation of said Zoning Ordinance and shall be subject to the penalty provisions of said Ordinance in effect at the time of violation. Each day that a violation is permitted to exist after notification of the same pursuant to said Ordinance shall constitute a separate offense.
  - ii. The Town of Yarmouth shall have the right to institute any and all actions or proceedings, including the right to enforce all the terms and provisions of this Agreement by injunction, legal and equitable actions and all other lawful process for the enforcement of the same.
  - iii. No penalties shall be assessed against the OWNER after the OWNER has transferred all right and interest in the subject property provided that all conditions which are construed to constitute a violation arose after the transfer or sale of the property to a successor. But, this shall not be deemed to waive and condition of approval or rights of enforcement against such subsequent OWNER (SUBSEQUENT OWNER), nor shall this be construed to

relieve the OWNER of any obligation or term of this agreement regardless of when such default, omission, or breach is first discovered.

- c) The TOWN further agrees that the failure of the Town of Yarmouth to object to any violation, however long continued, or to enforce any restrictions, provisions, conditions, covenant, or agreement contained in this Agreement shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or violation or as to any breach or violation occurring prior or subsequent thereto.

**5. FUTURE EXERCISE OF LEGISLATIVE ACTION**

The parties hereto hereby agree that nothing in this Agreement shall be construed so as to preclude the future exercise of the Town of Yarmouth's legislative authority relative to the zoning of the subject premises. In the event that the zoning of said premises is changed by the Town Council, the contracted use outlined above, subject to the restrictions, provisions, conditions, covenants, and agreements contained in this Agreement, shall be allowed to continue as a nonconformity or nonconforming use, whichever the case may be, in accordance with the provisions of the Zoning Ordinances may be in effect at the time of said zone change governing the same.

**6. WAIVER OF CHALLENGE**

The parties hereto hereby agree, for themselves, their successors and assigns, to waive any and all rights to challenge the validity of Town Council Order No. 12- 2019/20 taken August 15, 2019 authorizing this Agreement or the terms of this Agreement.

**7. SEVERABILITY**

The parties hereto hereby agree that if one of the restrictions, provisions, conditions, covenants, and agreements, or portions thereof, contained in this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portion hereof.

**8. APPLICABILITY OF ORDINANCES**

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning Ordinance of the Town of Yarmouth and any applicable amendments thereto or replacement thereof.

**9. MODIFICATIONS OF PLANS AND AGREEMENT**

This Agreement shall not be amended except with the written approval of the Town of Yarmouth, except that minor changes to the Subdivision Plans which have been approved by the Yarmouth Director of Planning and Development shall not be treated as an amendment hereof and shall not require further consent of the Town of Yarmouth

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered as of the day and year first above written.

Edward Libby  
BY: Edward Libby

Karen M. Stover  
Witness

Nathaniel J. Tupper  
BY: TOWN OF YARMOUTH, MAINE  
Nathaniel J. Tupper, Its Town Manager

Jennifer S. Doten  
Witness

**INHABITANTS OF THE  
TOWN OF YARMOUTH**

Dated: Nov. 8, 2019

Nathaniel J. Tupper  
By: Nathaniel J. Tupper  
Its: Town Manager, duly authorized

STATE OF MAINE  
CUMBERLAND, ss.

Nov. 8, 2019

Then personally appeared before me the above-named Nathaniel J. Tupper, as Town Manager of the Town of Yarmouth, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Inhabitants of the Town of Yarmouth.

Received  
Recorded Register of Deeds  
Nov 25, 2019 03:35:05P  
Cumberland County  
Nancy A. Lane

Before me,

Jennifer S. Doten  
Notary Public/Attorney at Law

Jennifer S. Doten  
Print Name Commission Exp. 10-11-22

Dated: 11-14, 2019

Edward Libby  
By: Edward Libby

STATE OF MAINE  
CUMBERLAND, ss.

11/14, 2019

Then personally appeared before me the above-named Edward Libby and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Karen M. Dubay-Stover  
Notary Public/Attorney at Law

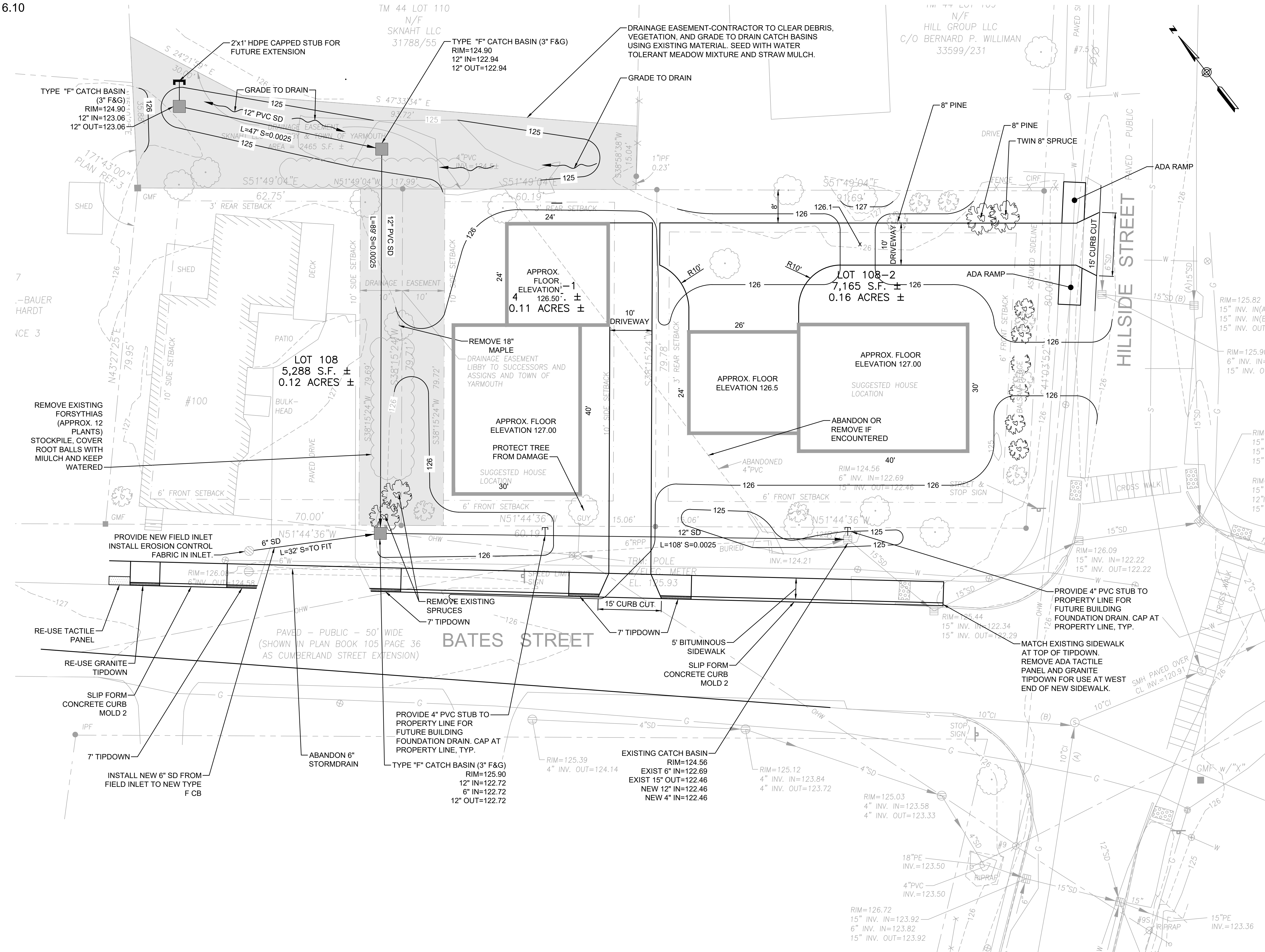
Karen M. Dubay-Stover  
Print Name

Karen M. Dubay-Stover  
Notary Public, Maine  
My Commission Expires:

5/15/2024

## 6.9



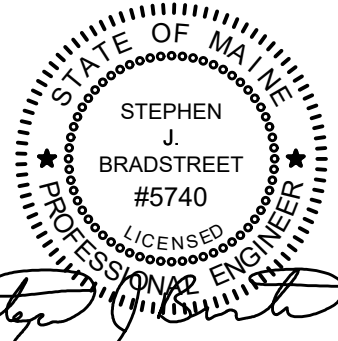


ED LIBBY

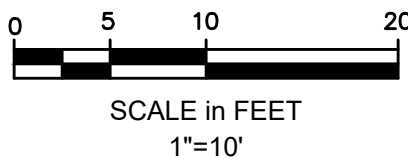
HILLSIDE/BATES STREET  
YARMOUTH, MAINE 04096

Prepared for:

ED LIBBY  
374 US ROUTE 1  
YARMOUTH, MAINE 04096



STEPHEN J. BRADSTREET, PE #5740  
400 COMMERCIAL STREET, SUITE 404  
PORTLAND, ME 04101  
207-772-2891



NOTES:

1. THE SITE IS PRIMARILY INTERNALLY DRAINED. THE CONTRACTOR SHALL PROVIDE SILT FENCE OR EROSION CONTROL BERMS IN AREAS WHERE SEDIMENT COULD RUN OFF SITE.
2. UNDERDRAINED DRIP EDGES FROM HOUSES SHALL BE CONNECTED TO NEW STORMDRAIN.
3. LOT OWNERS ARE RESPONSIBLE FOR MAINTENANCE OF DRAINAGE FACILITIES WITHIN THE EASEMENT AREAS SHOWN. A MAINTENANCE AGREEMENT RECORDED AT CCRD BOOK        PAGE       .



GRADING, DRAINAGE,  
AND EROSION  
CONTROL

B	YARMOUTH TOWN STAFF REQUESTED REVISION	11/1/19
A	FINAL PLAN SUBMISSION	10/02/19
No.	Revision/Issue	Date
Design by:	SJB	Checked by: ARF
Drawn by:	BGC	Approved by: SJB
Project:	181.06067	Date: 9-16-19
Sheet:		

C-1