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TOWN OF YARMOUTH
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PLANNING BOARD REPORT
YARMOUTH, MAINE

Three-season Porch Replacement

Chapter 701 Article IV.R.5.a.(4), Reconstruction or Replacement, Nonconforming Structure

39 Nubbin Reach., Yarmouth, ME, Map 24 Lot 15

David Chase, Applicant

Prepared by: Nicholas Ciarimboli, Code Enforcement Officer

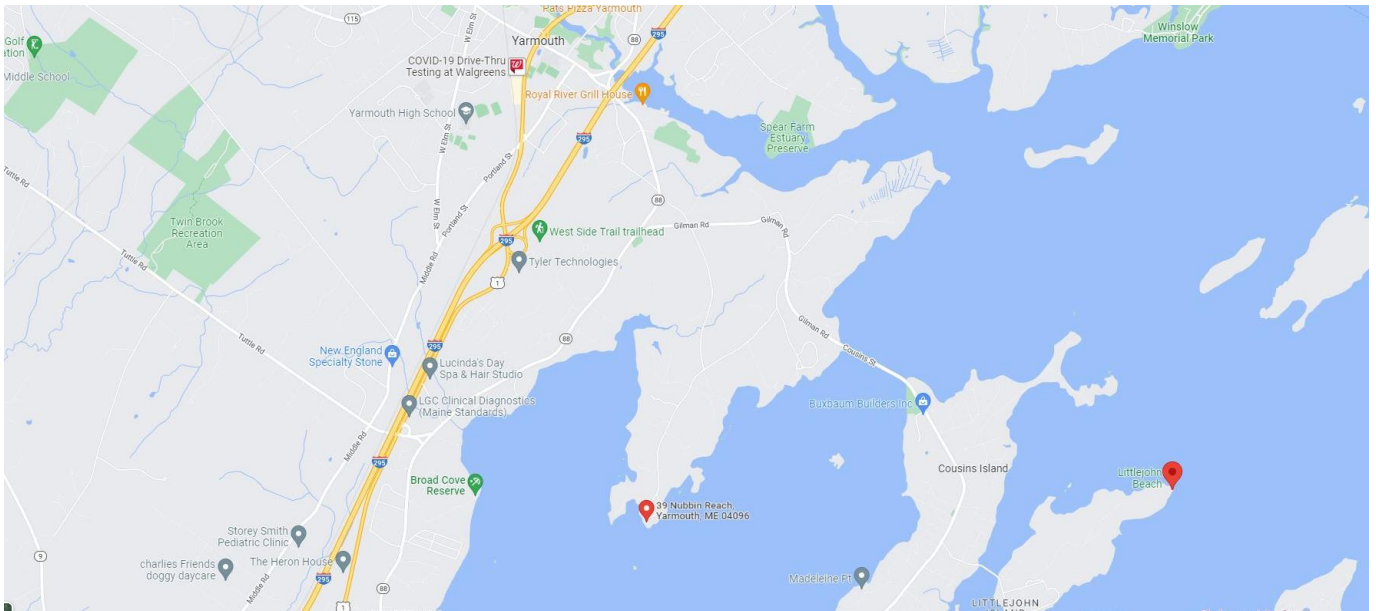
Report Date: September 8, 2022; Planning Board Meeting Date: September 14, 2022

I. INTRODUCTION and BACKGROUND

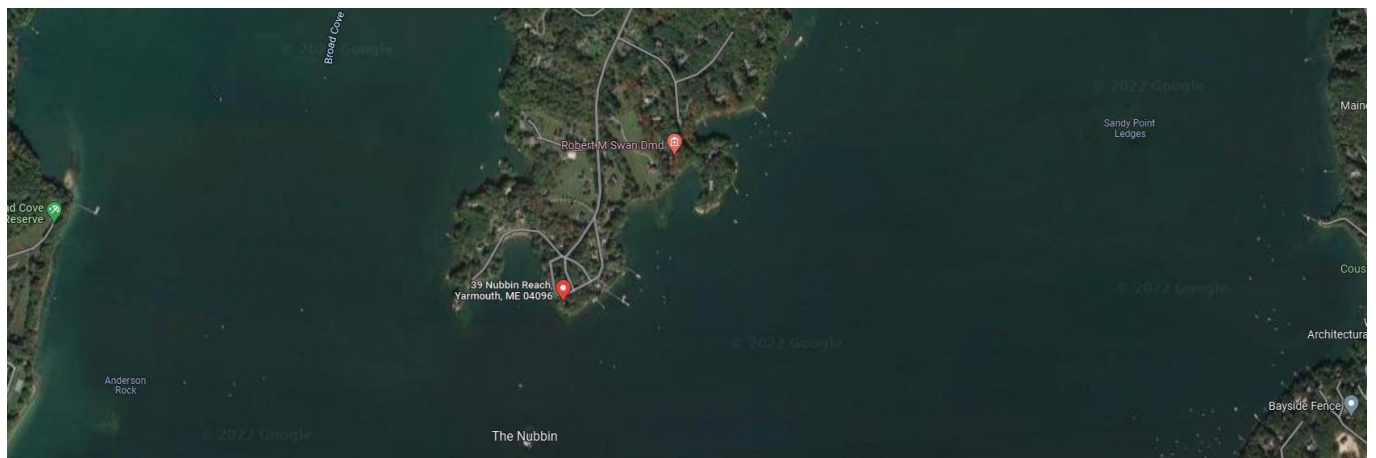
The property at 39 Nubbin Reach is an approximately 0.88 acre gently sloping lot at the corner of Nubbin Reach and Princes Point Road with coastline encompassing two sides. The previous summer cottage dating back to the 1910s (date per assessor's records), which is wholly nonconforming with regards to the 75-foot Shoreland Zoning setback, was recently renovated into a year-round residence. The applicant is now proposing to replace the existing two-story covered porch with a newly constructed two-story, three-season covered porch on the same footprint. Variations from the existing design include a frost wall foundation, revised roof line changing the existing shed roof to a hipped roof matching the remainder of the existing roof line, relocation of the steps to grade from the north side of the porch to the south side and providing an enclosed screened area. Although no expansion is being proposed at this time, per CH. 701, Article IV.R.9 reconstruction or replacement of a nonconforming structure is subject to Planning Board review and approval. Additionally, even though the proposed project cost (\$50,000) is less than 50% of the market value of the structure (\$315,243 per assessor's record), a relocation analysis for the porch is also required per CH. 701, Article IV.R.5.a.(2.) due to the replacement of the existing porch foundation.



(View from Nubbin Reach facing South with porch in red)



(Map with Site identified by red pin w/ white center)

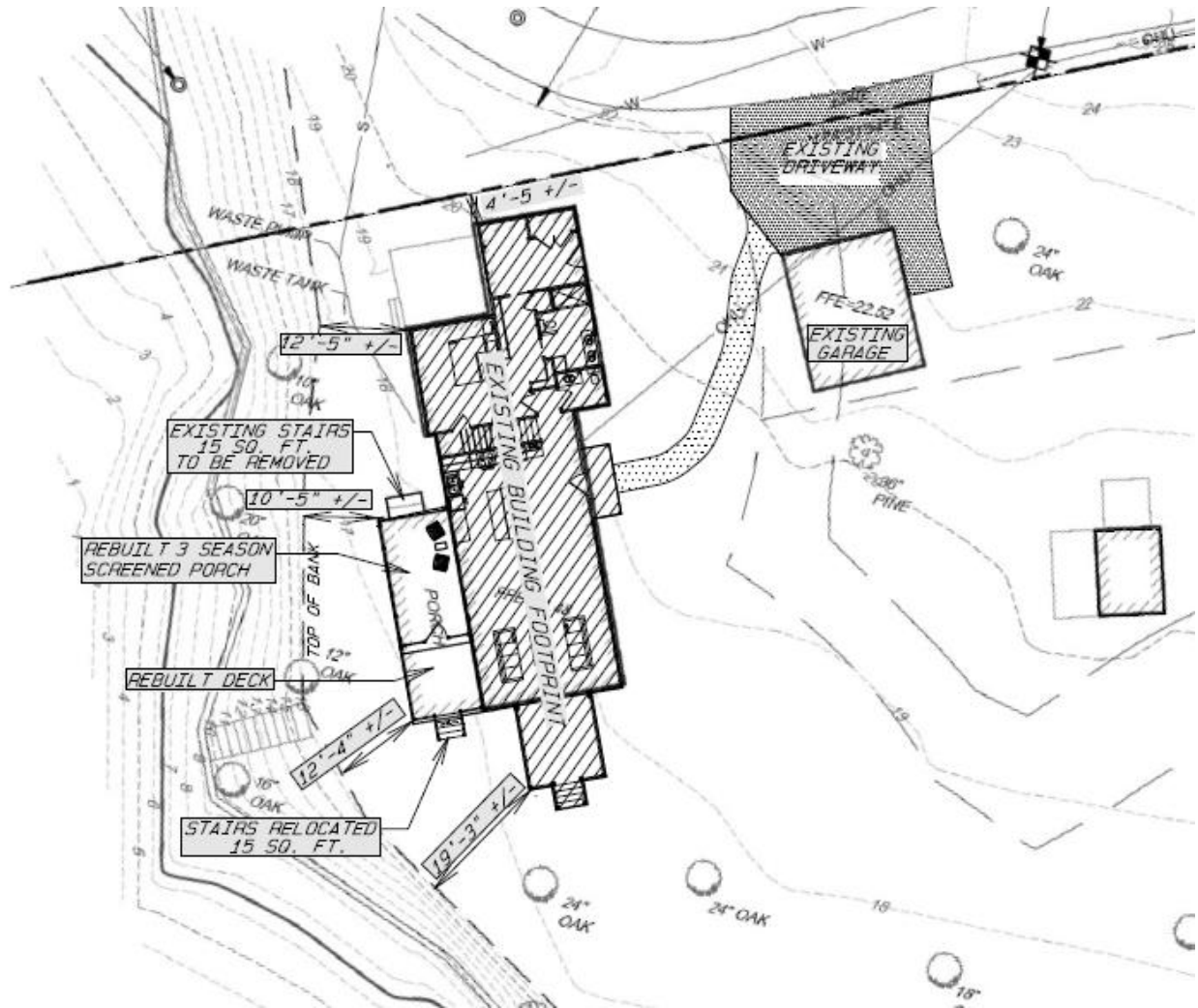


(Aerial with Site identified by red pin)



(Town GIS with porch identified with red circle)

A complete plot plan is provided in the application materials. Below is a screenshot of the improved portion of the site relative to the shoreline.



(Plot Plan)

II. REQUIRED REVIEWS

<i>Applicant’s Proposal</i>	<i>Applicable Standards</i>
Replacement of existing Porch and associated foundation on existing nonconforming Single-Family Residence	Shoreland Overlay District Permit Review Chapter 701 Article IV.R.11 a & b
Replacement of existing porch foundation	Chapter 701 Article IV.R.5.a.(2) Replacement of Existing Porch Foundation
Remove and rebuild existing porch (within the shoreland setback) and foundation.	Chapter 701 Article IV.R.5.a.(3), Relocation Assessment
No proposed increase to existing non-vegetated lot coverage (12%).	Chapter 701 Article IV.R.7.c.(4.) Non-vegetated lot coverage

26 notices were sent to area residents. A notice also appeared in the September 8, 2022 edition of *The Forecaster*. One public comment was received (attached).

III. ZONING ASSESSMENT

A. Shoreland Zoning Article IV, Section R.5.a(2), Replacement of Foundation

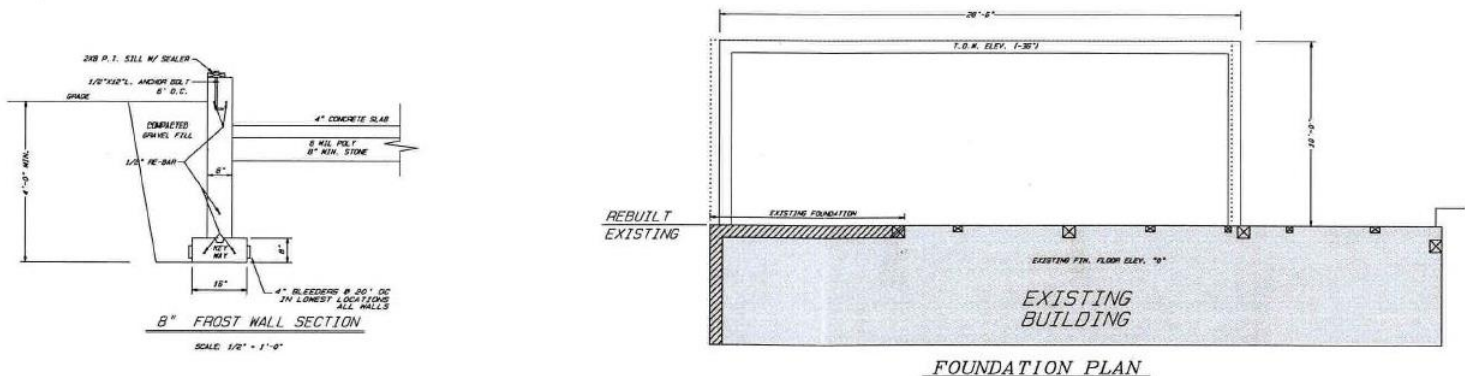
The project requires review under the terms of the Shoreland Zoning Article IV, Section R.5.a(2).

5. *Non-conformance* The provisions of Article III (Non-conformance) of the Zoning Ordinance shall apply to properties wholly or partially located within the RPD or SOD, except to the extent they are modified by this Section.

a. Nonconforming Structures; General

(2) *Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Permitting Authority basing its decision on the criteria specified in Section IV.R.5.a(3)*

The applicant is proposing a new frost wall foundation be placed under the proposed reconstructed porch. No additional cleared area or vegetation removal is proposed at this time. The non-vegetated lot coverage is also proposed to remain the same (current 12%, maximum allowed 20%).



B. Shoreland Zoning Article IV, Section R.5.a(3), Relocation

(3) Relocation

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

(b.) *In determining whether the Structure relocation meets the setback requirements to the greatest practical extent the Permitting Authority shall consider the size of the lot; the slope of the land; the potential for soil erosion; the location of other structures on the property and on adjacent properties; the location of the septic system and other on-site soils suitable for septic systems, (provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules if a subsurface disposal system is being or is to be used;) the physical condition and type of foundation present, if any; and the type and amount of vegetation to be removed to accomplish the relocation*

Due to the replacement of the foundation, the Planning Board may request that the applicant relocate the porch to a more conforming location in lieu of reconstruction in place. In determining whether the Structure relocation meets the setback requirements to the greatest practical extent, the Planning Board shall consider the following;

- (1) the size of the lot;

- (2) the slope of the land;
- (3) the potential for soil erosion;
- (4) the location of other structures on the property and on adjacent properties;
- (5) the location of the septic system and other on-site soils suitable for septic systems;
- (6) the physical condition and type of foundation present, if any;
- (7) The type and amount of vegetation to be removed to accomplish the relocation.

In this case, due to the limited scope of the reconstruction, it may not be practical to relocate the porch as it currently corresponds to the interior layout and existing door and window locations. As the whole of the house is already nonconforming, the porch in any location attached to the house will continue to be nonconforming. By utilizing the existing footprint, site disturbance should be minimized, and existing vegetated areas can remain. Although these issues may not be the seven outlined above, those considerations appear to be much more appropriate when considering the relocation of an entire structure rather than portions thereof.



(View of porch as it faces the water)

C. Chapter 701 Article IV.R.7.c.(4.), 20% Non-vegetated Lot Coverage

With the exception of General Development Districts located adjacent to coastal wetlands and rivers that do not flow to great ponds, and Commercial Fisheries/Maritime Activities Districts, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public

boat launching facilities regardless of the district in which the facility is located.

The existing non-vegetated lot coverage is 12% (4,649 SF/ 38,332 SF) and is proposed to remain the same.

D. Shoreland Permit Review Chapter 701 Article IV.R.11 a & b

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

1. Will maintain safe and healthful conditions;

The house shall maintain safe and healthful conditions, meeting all applicable building code and zoning requirements.

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

As proposed, the project will result in very little additional site disturbance and feature no increase to non-vegetated lot coverage. Erosion Sediment Control BMPs shall be in place throughout the duration of the project.

Although trees remain in the purview of the Code Enforcement Officer when handling projects within the Shoreland Overlay District, the Tree Advisory Committee recommends that the trees between the structure and the top of bank should be protected during construction. A condition of approval is recommended.

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

The applicant has indicated that the property is served by public water and sewer and will continue in this manner.

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

As proposed, the project should have little to no impact. Again, Erosion Sediment Control BMPs shall be in place throughout the duration of the project.

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

Effectively no change is proposed at this time in this regard.

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

The project will have limited additional site impact, and Erosion Sediment Control BMPs shall be in place throughout the duration of the project.

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

The project is not located in any of the districts listed above and should have no impact on existing commercial, fishing, or maritime activities located in such districts. The project has been reviewed by Harbormaster and no concerns have been raised.

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

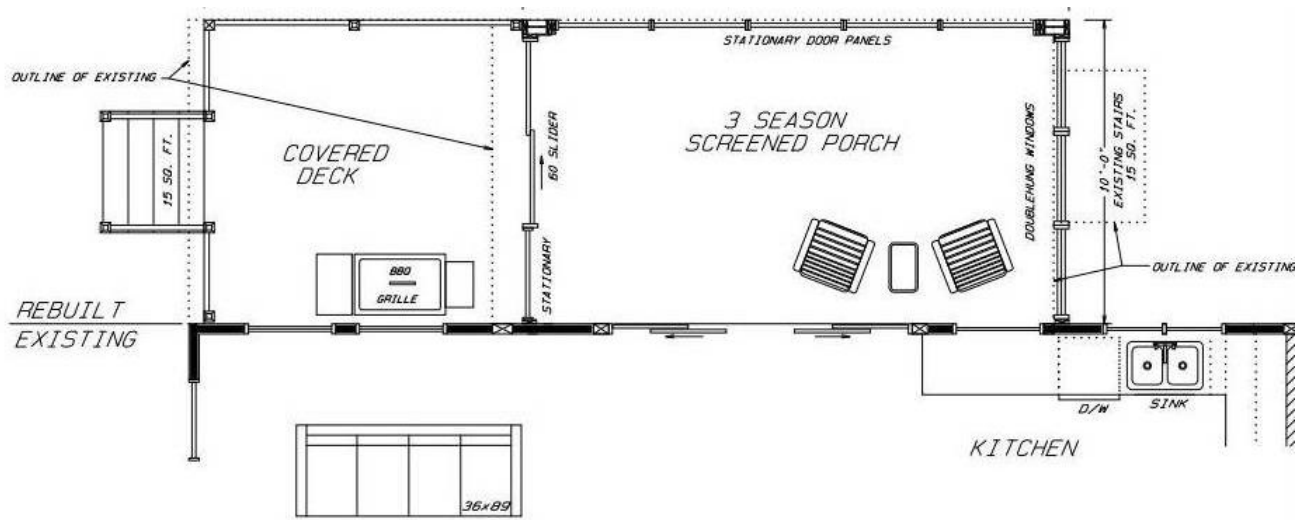
The porch is five feet above the preliminary FEMA flood elevation (EL 12).

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

The project is in conformance with the land use standards of the SOD including relocation analysis, and allowable non-vegetated lot coverage.



(View of porch facing southeast)



(Plan and Waterside elevation)

IV. STAFF RECOMMENDATION

As a legally existing nonconforming structure with a conforming use, the Planning Department recommends the Planning Board approve the application for the reconstruction of the existing porch in its present location as per the applicant's proposal.

V. PROPOSED MOTION

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report dated August 31, 2022, relevant to the Three-season Porch Replacement, David Chase, Applicant, Shoreland Zone Review, 39 Nubbin Reach, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

- A. Regarding **Chapter 701 Article IV, Section R.5.a(2) & (3), Foundation Replacement and Relocation Assessment**, that in the case that the foundation of the nonconforming structure is replaced that the plan **[is/is not]** set back from the shore edge to the greatest practical extent according to the standards for relocation contained in Article IV.R.5.a(3), and **[is / is not]** approved as to location.

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

- B. Regarding Shoreland **Permit Review Chapter 701 Article IV.R.7.c. Principal and Accessory Structures**, that the plan **[is / is not]** in conformance with the standards for review of this section including allowance of non-vegetated lot coverage, and **[is / is not]** approved.

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

- C. Regarding Shoreland **Permit Review Chapter 701 Article IV.R.11 a & b, Procedure for Administering Permits and Review Criteria**, that the plan **[is / is not]** in conformance with the standards for review of this section, and **[is / is not]** approved with the following conditions:

1. During construction, the applicant and their construction manager/contractor shall ensure that the protective fence to be placed around the oak trees located between the structure and the top of bank and is maintained in good condition. In addition, the applicant and their construction manager/contractor shall ensure that these trees are adequately watered and fertilized and a thick layer of mulch is placed within the protected area for the duration of construction. The use of machinery, heavy foot traffic, storage of building materials, washing equipment, use of chemicals, and similar hazards should be avoided. The applicant and their construction manager/contractor shall ensure that crane mats are utilized wherever heavy equipment is expected.
2. All erosion and sedimentation controls (ESC) best management practices (BMPs) shall be installed prior to the disturbance of site soils and vegetation. During construction, the applicant and their construction manager/contractor shall perform the required inspections and enforcement of the ESC plan per MDEP requirements, including weekly inspections and documentation of all inspection work. In addition, the Town will be performing site inspections and will be reviewing the inspection records per the Town's NPDES MS4 General Permit.

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

Attachments:

1. No Comments, Steve Johnson, Town Engineer – 8/26/22
2. No Comments, Erik Street, DPW Director – 8/23/22
3. No Comments, Mike Robitaille, Fire Chief – 8/25/22
4. Tree Advisory Committee, Memo – 9/2/22
5. Public Comment – David Robison & Laura Richardson – 8/27/22

Submit Comments to Nick Ciarimboli by 9/2/22

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.: 8/10/22

Agenda Date: 9/14/22

Project Description: Shoreland Permit

Project Location: 39 Nubbin Reach

Applicant: David Chase

Agent/Contact: David Chase - dave@allinconstructioninc.com

Project Description:

Remove existing porch and replace with 3 season porch

No Comments
8-26-2022

- ☐ 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:

8/10/22

8/10/22

8/22/22

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X

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☐ Notice Letters Created/Sent

☐ Agenda To PB

☐ Agenda Posting:

1. Forecaster

2. Website

3. Bulletin Board

☐ Copy Of Findings And Decision In File

Submit Comments to Nick Ciarimboli by 9/2/22

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Agent/Contact: David Chase - dave@allinconstructioninc.com

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*No comments
or
Concerns
PJS
8-23-22*

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- ☐ Respond To Applicant Re: Completeness
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Date Completed:

8/10/22

8/10/22

8/22/22

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***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
From: Michael Robitaille, Fire Rescue Chief
Date: August 25, 2022
RE: 39 Nubbin Reach

I have no comments regarding the Shoreland Permit submitted by the David Chase to remove existing porch and replace with a 3-season porch.

Yarmouth Tree Advisory Committee

TO: Planning Board Members
Erin Zwirko, Planning Director

COPY: Karyn MacNeill, Scott Couture, Nicholas Ciarimboli

DATE: September 2, 2022

FROM: Rebecca Rundquist, Chair
Michael Brandimarte, Susan Prescott, Lisa Small

RE: Applications for review

The Yarmouth Tree Advisory Committee has reviewed the applications for your meeting on 9/14/22 and has the following comments.

1. 36 Red Wagon Road. This application proposes the removal of an existing garage to be replaced with a two-story building comprising a 4-car garage and a 2-bedroom apartment. However, a visit to the site revealed that work has already begun. The previously existing garage has been removed (see attached photographs), and what appears to be a new foundation hole has been dug, in advance of any consideration by the Planning Board. In view of this unapproved work on the site, we have copied Mr. Ciarimboli on these comments. In addition to preceding approval, the work done has already impacted a number of the existing trees which provide a buffer from the abutting property. The trees will be further endangered by construction, and a detailed tree protection plan should be required.
2. 39 Nubbin Reach. This project is located in the Shoreland Overlay District. The existing porch is to be replaced by a 2-story 3-season porch on the same footprint. The plan identifies existing trees on the narrow strip of land between the porch and the top of the bank, primarily large, mature red oaks. A detailed tree protection plan should be required for them and for all trees on the site, which could be damaged by construction vehicles.

It is particularly important to protect the trees and root systems near the bank in order to prevent erosion of that area. Clearing of vegetation from a bluff face can lead to greater bluff erosion and a steeper bluff that is more prone to landslide. Vegetation tends to remove ground water, strengthen soil with roots, and lessen the impact of heavy rain on the bluff face. Adding weight to the top of a bluff can increase the risk of a landslide. Buildings, landscaping, or fill on the top of a bluff can increase the forces that result in a landslide. Even ground vibration can have an effect (Maine Geological Survey, Coastal Landslide Hazards, www1.maine.gov/dacf/mgs/hazards/landslides/facts/landslide/htm).

3. Railroad Square. We have previously commented on this plan, and we are pleased to see that some of our recommended tree species have been added to the landscape plan. Good detail is provided on planting and tree protection. We hope that the space will allow for as many of the large canopy trees as possible.

Photographs to accompany comments from the Tree Advisory Committee, 9/2/22



39 Nubbin Reach

From: [David Robison](#)
To: [Wendy Simmons](#)
Subject: 39 Nubbin Reach Planning Request
Date: Saturday, August 27, 2022 12:45:01 PM

Dear Wendy

Please forward this note to Erin Zwirko. We live close by at 894 Princes Pt Rd.

Regarding the Chase's request at 39 Nubbin Reach please take note that Laura and I are totally aware and are in favor of the Chase's project. We are hopeful that the planning board will grant the variance they have requested.

Sincerely

David Robison

Laura Richardson