



## **PLANNING DEPARTMENT REPORT**

### **YARMOUTH, MAINE**

Request for a Waiver of the Technical Standards and Approval of an Accessory Dwelling Unit

Robert and Carla Maguire, Applicant

636 North Road

Map 19 Lot 23

Prepared by: Planning and Development Department Staff

Date: March 15, 2023, Planning Board Meeting: March 22, 2023

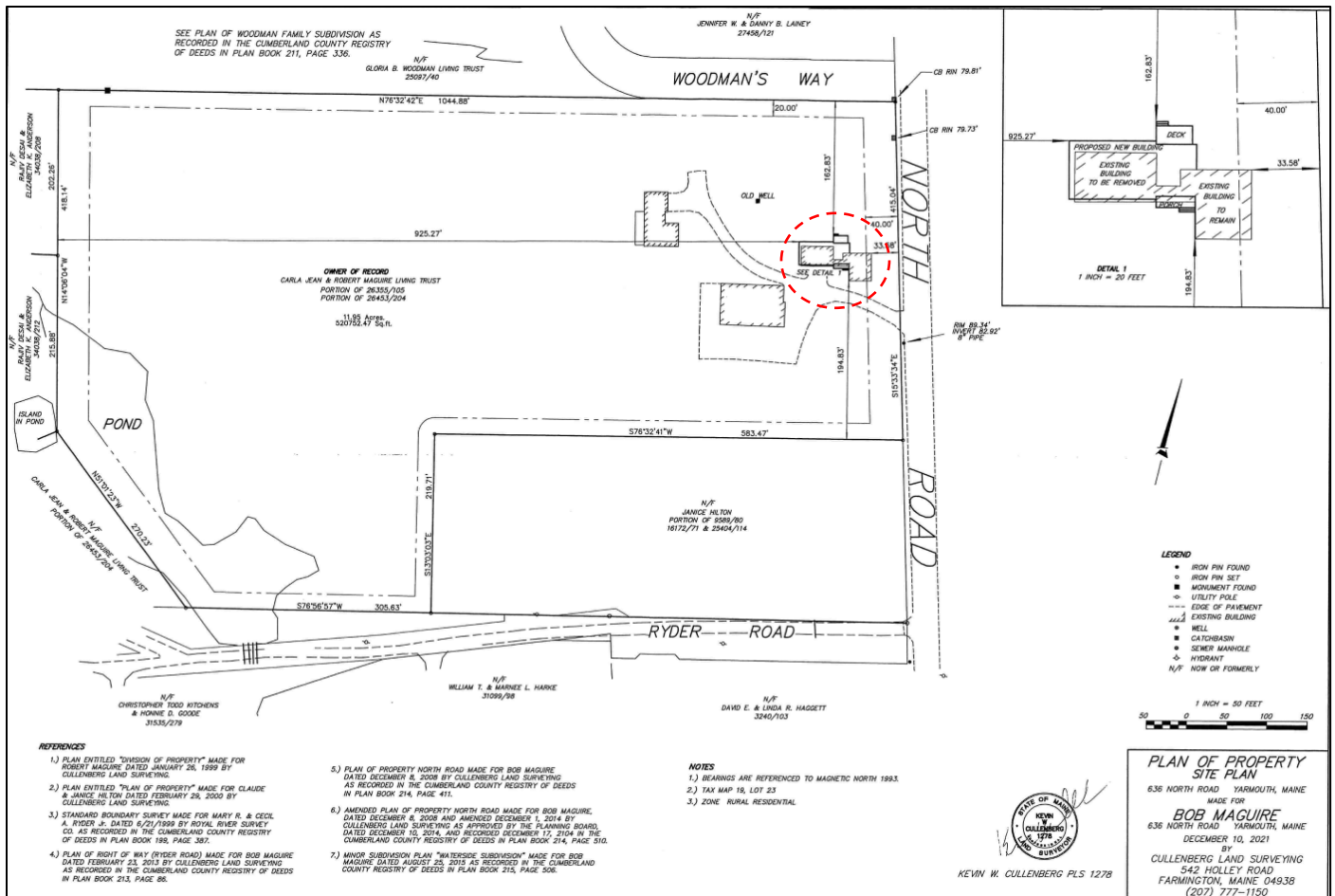
#### **I. INTRODUCTION AND PROJECT DESCRIPTION**

Robert and Carla Maguire submit for review the proposal for a conversion of an existing single-family dwelling at 636 North Road, (Map 19 Lot 23) to an Accessory Dwelling Unit (ADU). The existing single-family dwelling is a small bungalow, with a total floor area of 1,416 square feet, located at the front of the 11.95-acre lot. As the total floor area exceeds the maximum of 900 square feet for an ADU, the applicants are requesting a waiver of the technical standards from the Planning Board. If the waiver request is granted, the applicants also request approval of the ADU.



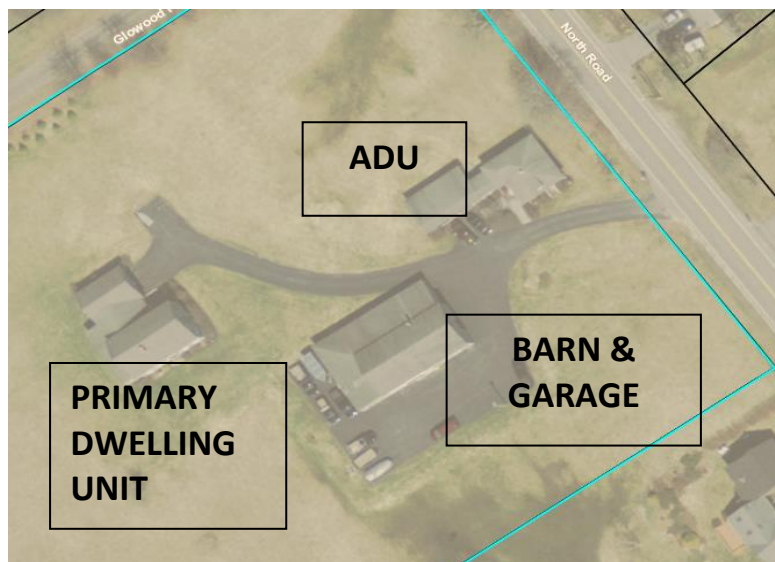
View of property and existing structure from North Road

In the photo above, the primary dwelling unit is located at the rear of the lot, behind the pre-existing barn and bungalow; the latter fronts North Road. The bungalow, circled in red below, has an existing attached two-car garage.

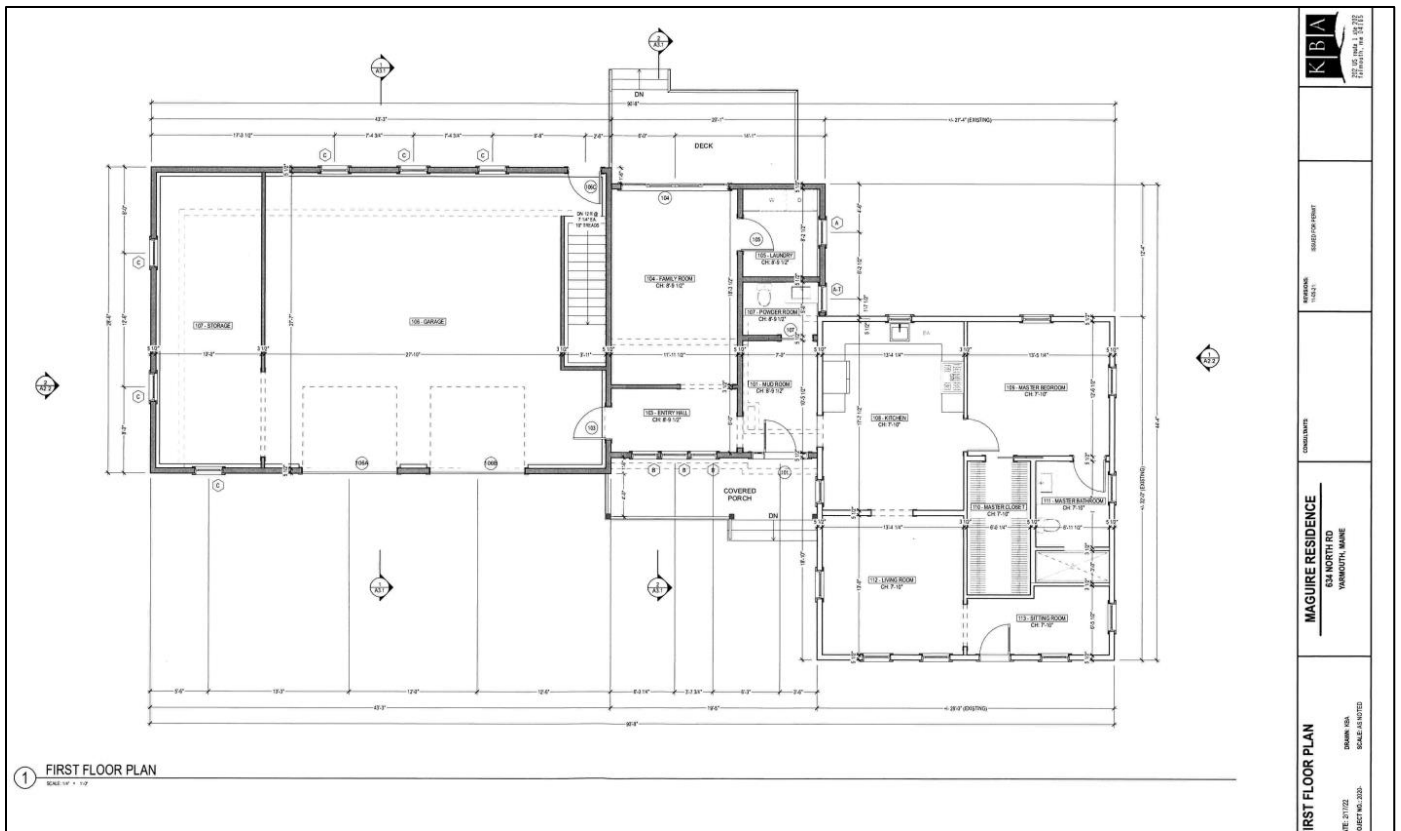


Site Plan for 636 North Road

The additional pre-existing structures on the site are the 1,280 square foot barn with an attached garage from 1993, and the principal dwelling of 3,337 square feet that was constructed in 1999. According to the application, the renovated bungalow now has 1,416 square feet of livable space, with a total building footprint of 2,967 square feet. This expansion of the bungalow from its original 896 square feet to 1,416 square feet exceeds the allowable maximum size for an ADU and would be considered a nonconforming lot with two primary, single family, dwelling units. The application states that the use of the bungalow will continue to be residential, either as a guesthouse or rental.



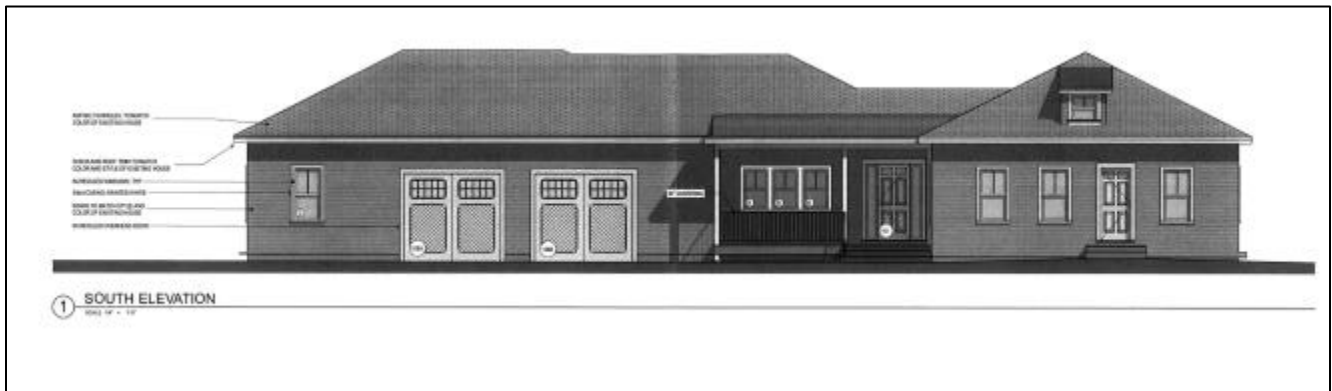
Aerial view of 636 North Road (Town GIS)



Renovated Floor Plan



Existing South Elevation



Drawing of South Elevation





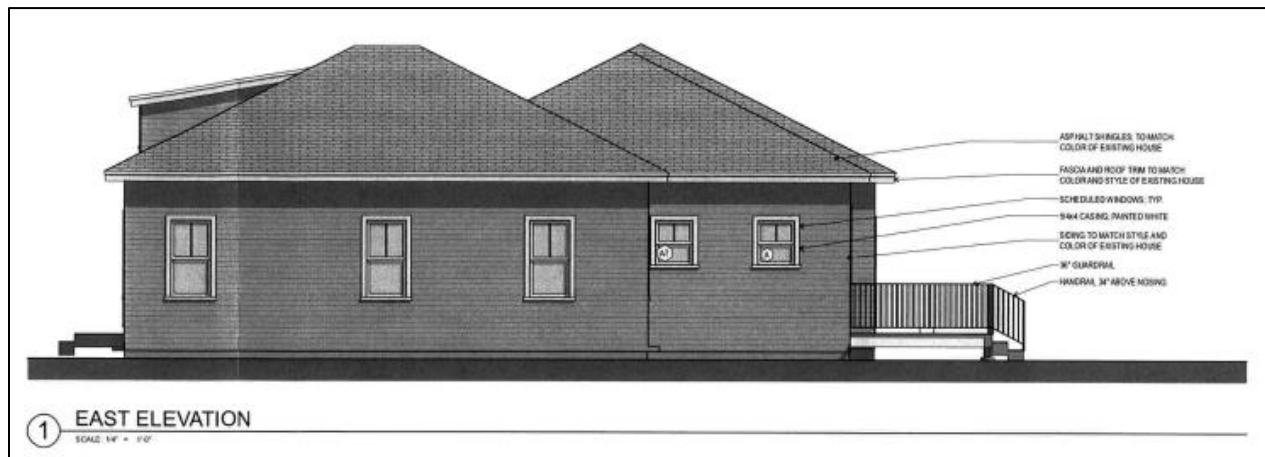
Existing North Elevation



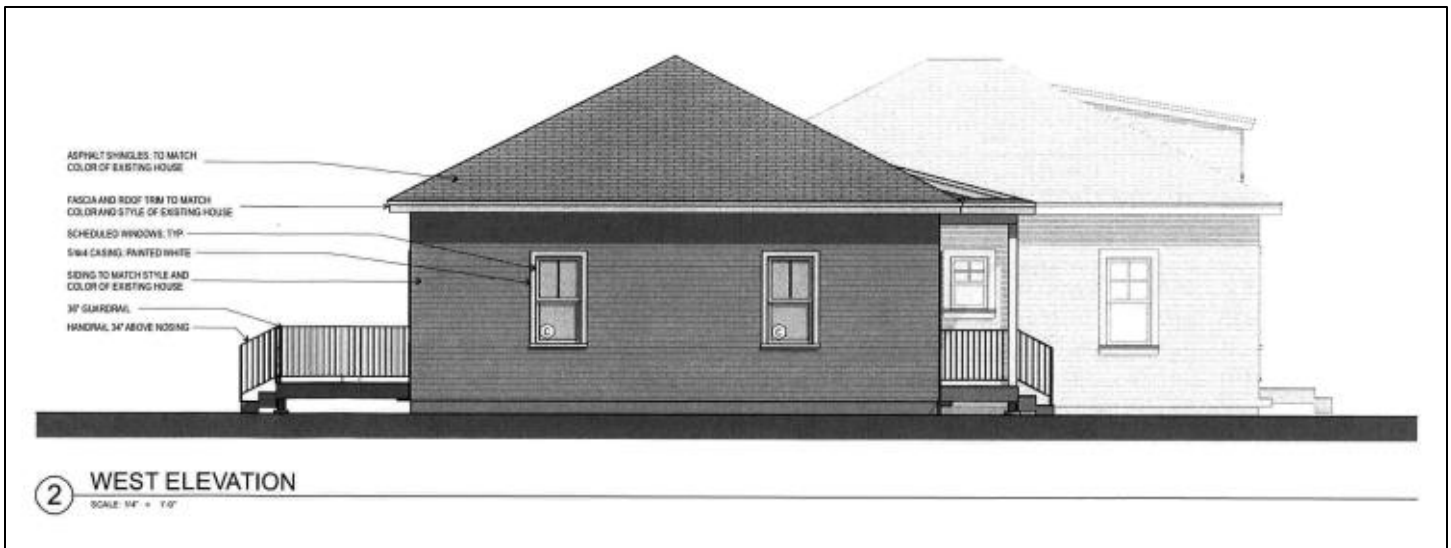
Drawing of North Elevation



Existing East Elevation



Drawing of East Elevation



Drawing of West Elevation

This application is in front of the Planning Board to correct the illegal condition of two primary dwelling units on the property; both the bungalow and the 1999 home are principal dwelling units. This condition has persisted for quite a while without discovery as the second home was built in 1999 and was only recently discovered as part of inspections associated with the renovation to the bungalow. The Department of Planning & Development does not have any evidence that suggests that it was knowingly allowed, but we do need to correct the condition at 636 North Road. The applicants are willingly working with the Department, and we determined that the pathway presented in this application meets the Department's needs and is consistent with the applicant's goals for the property.

The application to consider the designation as an ADU would bring the lot back into conformity, as ADUs are an allowed use in the Rural Residential district. Furthermore, Chapter 702 Article 1.J.13.I states that, "... 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." As noted above, the ADU is 1,416 square feet, which is substantially more than what the Department staff felt comfortable approving, and we are exercising the ability to refer any Minor Site Plan, which is required for an ADU, to the Planning Board for action.

The preamble to the technical standards, of which the ADU standards are a part of, is found in Chapter 702, Site Plan Review, Article 1.J: *"The Following performance standards shall apply to all site plans, provided, however, where the Planning Board finds that, due to special circumstances of a particular plan, the provision of certain required performance standards which are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive such requirements, subject to appropriate conditions."* The applicants and the Department argue that the technical standard of size should be waived due to the special circumstances found here (i.e., the long persisting condition of two principal dwelling units) and due to the interest and willingness of the applicant to work with the Department to rectify this matter. Should the Planning Board agree with the Department's position, we ask the Planning Board to approve the ADU.

## II. PROJECT DATA

SUBJECT	DATA
Existing Zoning	Rural Residential
Existing Use	Two Single-family homes & barn
Proposed Use	Single-family home with ADU & barn
Parcel Size	11.95

Uses in Vicinity: The surrounding neighborhood consists primarily of rural residential properties with homes on relatively large lots resulting from the Waterside Subdivision along Ryder Road. The Atlantic and St. Lawrence Railroad flanks the

westerly edge of the subdivision, with 231 Ryder Road west of the railroad tracks along the Royal River. Across North Road to the east is Ledge Road and Pratt's Brook, similarly rural residential in character.

According to Assessors data on the Town website, of the 70 records on Map 19 in the Rural Residential District, the majority are single-family homes and one has (Map 19 Lot 21) an ADU. Of the 53 records on Map 20 in the Rural Residential zone, the majority are single-family homes and one (Map 20-36) has an ADU. Of the direct abutters within 500 feet of 636 North Road, one single-family home has an ADU.

### **III. PUBLIC COMMENT**

Notices of this public hearing were sent to 26 property owners in the vicinity (within 500 feet) of the proposed development. No public comment was received.

### **IV. DEVELOPMENT REVIEW**

As the conditions exist, the following review of Site Plan Standards will be for the existing conditions.

#### **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 already completed renovations of this structure and provided a floor plan depicting all required elements.

*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: This renovation is completed, and it does not appear that the architectural elements of the building have changed drastically from the prior structural form, as shown in this photo from the Assessor's Database below which pre-dates the renovations.



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

Town Comments: The renovation does not alter the exterior design of the structure facing east to North Road and minimally changes the southern view with a new covered porch. The rear of the home (north facing) is the only façade that has changed in size and the addition of the rear deck. Therefore, the proposal is in harmony with and maintains the scale of the neighborhood.

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

Town Comments: The proposed ADU will not create excessive noise, traffic or parking congestion. The ADU has the same number of garages (2) as it had previously.

- 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: Although the Yarmouth Water District has not submitted any comments, presumably, since the structure is pre-existing, there is a capacity to serve and there is no change in bedrooms or number of dwelling units within the structure.

- 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 renovations to the ADU did not add any new doors to the structure.

- 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 does not appear to be any 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: The alterations of the structure does not appear to have altered any natural land forms.

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

Town Comments: The existing garage can accommodate two vehicles and there is sufficient space in the driveway to accommodate additional vehicles.

- 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: A single-family dwelling existing on the lot. Despite the bungalow's expansion, it is still subordinate to the primary dwelling unit, which is a two-story structure of 7,544 gross square footage and 3,337 square feet of living space.

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

Town Comments: The structure to be designated as the accessory dwelling unit is pre-existing. The existing structure is only nonconforming to the front setback at 33.58 feet and the requirement is 40 feet. Nothing as part of this approval will allow the structure to encroach any further on setbacks, and no variances are being sought.

- 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: While a deed has not been provided with this application, the site plans provided show that the Owner of Record is the Maguires and documentation was provided in 2015 when the property was reviewed for under Chapter 601, Subdivision. Recording a declaration of restrictions regarding the ADU as required by this standard is recommended as a condition of approval.

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

Town Comments: The applicant has indicated that the floor area of the unit is greater than 900 square feet, though this is due to the ADU occupying the entire floor of the structure. The applicant has listed the



footprint of the renovated unit as 1,416 square feet with a total building footprint of 2,967 square feet. This is a 58% increase in livable space over the standard. Although the standard indicates that the Planning Department may allow increases to efficiently use all of the floor area of existing structures, this increase was more than we felt comfortable approving.

However, the preamble to the technical standards, of which the ADU standards are a part of, is found in Chapter 702, Site Plan Review, Article 1.J: *“The Following performance standards shall apply to all site plans, provided, however, where the Planning Board finds that, due to special circumstances of a particular plan, the provision of certain required performance standards which are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive such requirements, subject to appropriate conditions.”*

The applicants and the Department argue that the technical standard of size should be waived due to the special circumstances found here (i.e., the long persisting condition of two principal dwelling units).

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

Town Comments: The structure has one designated primary bedroom.

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

Town Comments: The Town Engineer had no comments and, presumably, as this is a pre-existing structure the existing water and sewage facilities are up to code.

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

Town Comments: The renovation was appropriately permitted with the Code Enforcement Officer. No other permits have been identified to be needed.

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

Town Comments: The Fire Chief did not submit any comments on this application, but the building permit for the proposed renovation pre-dates the effective date of Chapter 317 Section 3.2.1.2 for a sprinkler system and is therefore exempt.

- 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: As discussed in section e. above, the renovations to the ADU did not add any new doors to the structure. A front entrance under the covered porch leads to a “mudroom” and “entry room” from the driveway and garage, and likely functions as the primary entrance or a “side door.” A second front entrance leads into a “living room” and a “sitting room,” but like many older homes, this door is likely not used as the formal entrance but visually maintains the proportions of the south facing façade. There is also a rear door leading off the enclosed rear deck, although there was a rear door leading to the yard previously.

- 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 proposed structure to be designated as an ADU is existing structure and the exterior features resemble that of a single-family dwelling. The 1940 era bungalow predates the primary dwelling unit on the lot, which was constructed in 1999 and is at the rear of the lot. The bungalow, while at the front of the lot, is visually subordinate to the primary dwelling unit which is 2 stories tall and has a building footprint of 7,544 square feet.

While many ADUs are built over garages in Yarmouth, detached ADUs that are smaller than the primary dwelling unit are contextual as well. Below are three examples of ADUs that resemble single-family dwellings and are not at the rear of the lot.

Below is an example of an ADU in the Rural Residential district that resembles a single-family home. This structure was constructed in 1870 and predates the principal dwelling unit, which was constructed in 1996. The ADU structure is visually and architecturally subordinate to the primary dwelling unit even though it is not situated in the rear of the lot.



31 Free Range Lane ADU



Aerial view of parcel

The parcel below is in the Low Density Residential district; it has a similar number of structures on the lot to 636 North Road, although only the barn and shed are considered outbuildings. From the street frontage, the middle structure containing the ADU resembles a separate residential dwelling unit even though it is attached at the corner to the primary dwelling unit. The ADU structure is visually and architecturally subordinate to the primary dwelling unit even though it is not in the rear of the lot.



60 Gilman Rd (ADU is middle building)



Aerial view of parcel

The parcel below is in the Medium Density Residential district and also has 3 structures on the lot: the primary dwelling unit, a barn/garage and an ADU. Unlike the previous examples, the structures do not have street frontage and are set back in the lot. However, the ADU structure is the first structure visible from the street. The ADU structure is visually and architecturally subordinate to the primary dwelling unit even though it is not in the rear of the lot.



91 Burnell Drive ADU



Aerial view of parcel

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

Town Comments: The structure to be designated as an ADU is existing and is only non-conforming at the front setback, which is less than the required 40 feet. The primary dwelling unit, an existing single-family home, is conforming.

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

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

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

Town Comments: The existing single-family use is a conforming use for a lot within the Rural Residential district.

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

Town Comments: The lot is designated as a Multi-House MDL-03 in the Assessor's database, which is a unique coding in the Town. While other parcels in Town have more than 3 structures, often referenced in the Outbuilding section in the Assessing Database, this parcel is unique in that it appears to have two dwellings. The conversion of the bungalow to an ADU will bring the property into compliance.

- 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. RECOMMENDATION

As this structure is pre-existing, with less than 50% of the floor plan altered and no changes to the building's use, the designation of the structure as an ADU is a matter of consistency with code and semantics. Although it exceeds the maximum square footage for an ADU, it is still visually and architecturally subordinate to the principal dwelling unit. The building's form has not drastically altered in bulk or character and otherwise meets the Technical Standards of Chapter 702.

The Planning staff recommends that the waiver be granted as to the size of the ADU, and that the Planning Board approve the ADU.

## VI. PROPOSED MOTIONS

The following motions are proposed:

### A. WAIVER OF ADU TECHNICAL STANDARD

On the basis of the application, plans, reports and other information submitted by the applicant, information from the public hearing, information and the findings and recommendations contained in Planning Board Report dated March 16, 2023 for an approval of a request for a Waiver of the Technical Standards for Accessory Dwelling Units, Robert and Carla Maguire, Applicant; 636 North Road, Map 19 Lot 23, regarding the applicable regulations and standards of Chapter 702, Site Plan Review, the Planning Board hereby finds and concludes that although it exceeds the maximum of 900 square feet for an Accessory Dwelling Units, that the structure still **[meets/does not meet]** the required standards and is therefore **[approved/not approved]** subject to the following conditions of approval.

### B. APPROVAL OF THE ADU

On the basis of the application, plans, reports and other information submitted by the applicant, information from the public hearing, information and the findings and recommendations contained in Planning Board Report dated March 16, 2023 for an approval of an Accessory Dwelling Unit, Robert and Carla Maguire, Applicant; 636 North Road, Map 19 Lot 23, regarding the applicable regulations and standards of Chapter 702, Site Plan Review, the Planning Board hereby finds and concludes that the Accessory Dwelling Unit **[meets/does not meet]** the required standards and is therefore **[approved/not approved]** subject to the following conditions of approval.

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

## CONDITIONS OF APPROVAL

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

## Attachments:

1. Steve Johnson, Town Engineer – No Comments – 3/6/23
2. Erik Street, DPW Director – No Comments – 3/9/23



**Submit Comments to Erin Zwirko by 3/10/23****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:

Agenda Date: 3/22/23

Project Description:

Project Location: 636 North Road

Applicant: Robert &amp; Carla Maguire

Agent/Contact:

*NO COMMENTS  
by 6-2023*

**Project Description:** The applicant's request a Planning Board waiver for the size of the ADU. The structure exists, but it was found that there are two dwelling units on the same property. Following discussion with CEO and Planner, requesting an after-the-fact ADU approval with the waiver for size, is the best pathway forward.

Date Completed:

2/23/232/23/232/24/23☐ 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)

XXXXXXXXXXXXXXXXXXX☐ 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 Erin Zwirko by 3/10/23****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:

Agenda Date: 3/22/23

Project Description:

Project Location: 636 North Road

Applicant: Robert &amp; Carla Maguire

Agent/Contact:

*No comments  
or concerns.  
Erin Zwirko  
3-9-23*

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- ☐ 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:

2/23/232/23/232/24/23XXXXXXXXXXXXXXXXXX

- ☐
- Notice Letters Created/Sent

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2. Website

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- ☐
- Copy Of Findings And Decision In File