Response to Rebecca Runquist's Appeal
To the General Board of Zoning Appeals
Town of Yarmouth

By Appellee: Janice Cooper, 53 West Elm St., Yarmouth, Maine

Issue presented by Appellant:

Rebecca Runquist has appealed the August 17, 2020 opinion of Planning Director Alex Jaegerman in which he determined: "**Short term rentals (STR) may be conducted with the host present or the host absent.** The ability to conduct a STR with the host present does not violate the use as a single-family residence in the MDR [medium density residential zone]. " Ms. Runquist's contrary argument relies primarily on a statement contained in a July 6, 2015 email to Janice Cooper from the previous Code Enforcement Officer, Bill Longley. In this, Mr. Longley asked Ms. Cooper to review Ms. Runquist's numerous complaints (attached to his email and summarized below) and state whether her complaints were "true or accurate." In his final sentence, he writes: "The only approved use of your property is for 'single family' which would not allow the rental of the main house and your occupancy of the studio at the same time in my opinion. If you can respond as soon as possible by email that would be great."

Issues raised by Appellee:

1. **The August 17, 2020 findings of the Planning Director Alex Jaegerman in favor of Appellee's position are based on a through and accurate reading of the Town's existing ordinances and the history of this property.**

The Board of Zoning Appeals should adopt Mr. Jaegerman's findings based on his careful and accurate analysis of the Town's ordinances. His expertise and experience as Yarmouth's principal administrator of these rules and as a veteran land use planner lend authority to his conclusion. Moreover, his opinion is based on a comprehensive review of the file on the subject property by him and the current Code Enforcement Officer, Nicolas Ciarimboli.

Mr. Jaegerman poses the question and answer at hand simply: "Can the [Appellee's] out-building be used as a bedroom?" He notes that the Code does not speak to any limitation or restrictions on the use of the existing studio (denoted a nonconforming structure because of its grandfathered setbacks], nor do any other provisions of Chapter 701 (Zoning) Article III which deal with non-conformity contain any such restrictions on use. "Therefore **the underlying MDR zone is the sole zoning regulation on use**. Accessory structures in the MDR may be used in compliance with uses in compliance allowed in the MDR, including such uses as studio space or bedrooms .... **Detached sleeping quarters do not constitute a second dwelling unit. If the accessory structure**

does not contain all the requirements of a dwelling unit: bathroom, sleeping room, living area and **kitchen, then it is not a separate dwelling.**"

Other facts support Mr. Jaegerman's conclusion. Notably, a previous Appeals Board specifically approved the use of the out-building at 53 West Elm St. as a bedroom. The then-owners successfully sought permission to renovate the garage (the site of the present studio) into a bedroom. Over the years, other residential owners in Town have converted out-buildings with Certificates of Occupancy (COs)--garages, sheds, and other structures--into additional bedrooms for teenagers, guests, grandparents, etc. To disallow it in the instant case would single out my property for a unique restriction that unfairly limits the use and enjoyment of my property.

2. Ms. Runquist's reliance on Mr. Longley's quoted opinion is misplaced since he was referring solely to rules governing an Accessory Dwelling Units (ADU's) and to the out-building as it existed at the time (2015), which lacked a Certificate of Occupancy (CO).

Mr. Longley's email responds solely to the subject raised by Ms. Runquist: Whether Appellee was using the out-building as an Accessory Dwelling Unit (ADU) under Article 702 Chapter 13, an entirely different part of the Code than the provisions governing non-ADUs. The "facts" she assembles to make this argument reflect her wholly inaccurate understanding of the rules governing ADUs and Yarmouth's land use plans generally. She complains:"[Ms. Cooper's] **property is too small to accommodate all that is occurring there and it was my understanding that is [sic] was decided by the town**." The Town (through this Board) only decided to deny Ms. Cooper's application for an ADU because of too few parking spaces. (A defect that with enough money could have been remedied.) "All that is occurring there" refers to the body of her email: her litany of petty and untrue activities that alleged occurred on my property or her's. For example, she writes that in July 2015 I was renting my house to tenants who "have lots of small children and two large SUVs." She later refers to the children in as a "gaggle of children ... on my side of the fence." Let me set the record straight: Although I would have been allowed under Yarmouth and Maine law, and my Airbnb contract, to accommodate up to six people at a time in my principal dwelling, the July 2015 tenants consisted of a quiet German couple and their two young children. They had one vehicle. According to the mother, the only time a child crossed onto Ms. Runquist's property was when her two-year old son briefly toddled onto Ms. Runquist's driveway, which is adjacent to mine. The mother quickly retrieved him. Ms. Runquist further complained that my disregard for her property rights included letting my dog in her garage. "It just wanders without a leash." I did not own a dog then or now. When asked, Ms. Runquist told me that the dog was a black lab. My husband occasionally walked his dog, a Golden Retriever, on a leash, to my house. We have never owned a black dog, although I had seen one wandering in our neighborhood. If a "gaggle" of children wandered into Ms. Runquist's yard, they were not my tenants and were not under my control. At the time, there were no

fences dividing our properties.

This record is pertinent because it illustrates Ms. Runquist's misunderstanding of the applicable zoning rules. She repeatedly told me that she believed that our neighborhood is too dense for additional people or uses, especially Airbnb. She shouted her hostility to Airbnb at several of my peaceful tenants, at least once using profanities within earshot of a minor. (Note: Most of the year, I live alone in my three/four bedroom house and have one small car.)

I believe that she made the density argument to the Board in my ADU hearing, but the Board did not reference those grounds. Indeed, Yarmouth zoning rules do not limit the use of primary residences or out-buildings because of lot size, density or configuration. Nor has the Town adopted any limitations on short-term rentals based on lot size, neighborhood, or other factors. It is solely Ms. Runquist's opinion that the size or confirmation of a plot alone should control permissible uses.

Tellingly, Ms. Runquist's final words--"her property is too small ... and that ... was decided by the town" confirm that she is complaining to Mr. Longley that the annoying behavior is in violation of the ruling that the out-building is not an ADU. This demonstrates a fundamental defect in Ms. Runquist's understanding of Article 702 Chapter 13, pertaining to ADUs. It is accurate that my out-building cannot be used as an ADU, as this Board has ruled. Because the structure is not an ADU, I cannot "rent" or hold it out as a separate dwelling. ADU rules, however, are irrelevant to whether my non-ADU out-building can be used for other purposes not prohibited in the MDR. The complained-about behavior--wandering children and dogs, or my poor driving skills--is not only irrelevant to the original ADU decision but instead reflect Ms. Runquist's continuing and inaccurate contention that a dense neighborhood shall not be allowed ADUs or non-ADU structures. She may wish it were so, but it is not.

In her appeal, Appellant has conflated the rules and decision covering ADUs with the rules pertaining to out-buildings not used as ADUs. Given that her email repeatedly (albeit confusingly) refers to the ADU ruling, Mr. Longley's opinion naturally would also concern rules governing ADUs. This interpretation is supported by Mr. Longley's own phrasing in his email to me. In the second sentence, he writes: "You may recall that the Planning Board denied your request for an ADU."

3. The Important of Timing and Context to Understanding Mr. Longley's opinion

Mr. Longley July 2015 email was written before Ms. Cooper made numerous improvements to the out-building that Mr. Longley told her were necessary for a CO, i.e. changes required to allow a person to safely sleep in that building. These changes included the replacement of an existing window with a Fire Code-compliant window (wide enough to allow egress); the addition of electric outlets on every wall; and the

replacement of an air vent from the side of the building to the building's roof. Viewed within this context, Mr. Longley's opinion that I could not sleep in the structure (which at that point was not CO-compliant) is absolutely correct. In his call with Mr. Jaegerman several years later, after he knew I had made the safety improvements, he voiced a different opinion about my right to sleep in the out-building. This opinion, too, was correct. In this call, made from Mr. Jaegerman's office while I was present, Mr. Longley agreed with Mr. Jaegerman that the out-building on my property could be used as an additional bedroom.

The timing and context of the relied-upon emails of Mr. Longley and Ms. Runquist show that **Mr. Longley's 2015 email opinion simply do not apply to the changed circumstances of the Appellee's out-building as it now exists.** It now has a CO permit. The owner does not seek to "rent" the premises as a separate dwelling, but only to be "present," in the words of Mr. Jaegerman. As Ms. Runquist notes, the structure cannot serve as an ADU unless a kitchen is added. However, the addition of a kitchen would **follow** the finding that the building can be used as an ADU; it is a process requirement, like an inspection by the Fire Marshal. In fact, as explained below, the out-building has no working kitchen.

Ms. Runquist further confuses the analysis by misquoting Mr. Jaegerman. He states, "Short term rentals (STR) may be conducted with the **host present or the host absent**." He does NOT use the word "rental," as Ms. Runquist does, which implies an exchange for money, but rather refers to mere presence. Rental of an out-building puts the structure in the category of ADUs or separate dwellings, which was never within the scope of Mr. Jaegerman's opinion or his telephone query to Mr. Longley.

4. There is no kitchen in the out-building

A principal difference between an ADU and an out-building with a CO used as a bedroom is the presence of a kitchen in the out-building. Ms. Runquist cites a "tax card," tab 4 of her submission, in support of her assertion that there is a kitchen in the out-building. A form submitted by Ms. Runquist (Tab 4) contains a notation under "kitchen" for the studio, which reads: "Old Style." While the meaning of these words is not clear, I can attest that the studio does not have a kitchen; there are no cooking facilities installed in the out-building. The person who filled out the form may have been referring to the sink in the main room that was originally in the toilet enclosure. I had the moderately large sink moved into the main part of the structure when I added a shower (which I need after exercise and yard work when the house is occupied). The bathroom now has a very small sink. The larger sink in the main section of the building is needed for my art work, which is the principal use of the studio. Finally, in footnote 4 (mislabeled as footnote 2 in Ms Runquist's appeal), Ms. Runquist argues that because the Appellee stated that the out-building "'complied with all the other criteria of the Ordinance with the exception of Parking,' she implied "**that it had a kitchen**." This was never my intent. Improvements

to satisfy the requirements of an ADU should follow, not precede, a finding that the structure can be used as such. Thus, no implication was intended or should be inferred.

5. Mr. Longley's email "opinion" is not appealable

Ms. Runquist also argues that her appeal should prevail because I did not appeal Mr. Longley's statement that I could not sleep in the studio. As noted, my reading of his opinion is that I could not sleep in the out-building until it had a CO, so I do not disagree with his conclusion. Mr. Longley never suggested that I had to reply in writing to preserve any appeal rights. I spoke to Mr. Longley frequently, and the issue never arose.

6. Finally, Ms. Runquist launches a **broad-based legal attack on short term rentals** being allowed in Yarmouth. She has brought this demand before the Town Council and Board often, without success. A few Maine communities have tried to regulate the use of STRs with varying degrees of success, failure and public outrage. The Maine Legislature has rejected a ban on such limitations. This appeal is not the appropriate time or place for a ruling on such a broad-based attack on our rules. It is a decision better left to the Town Council or State Legislature.

Respectfully submitted,
/s/
Janice Cooper, Appellee