
YARMOUTH GENERAL BOARD OF APPEALS MINUTES

October 6, 2021

I. ROLL CALL OF MEMBERS

PRESENT

ABSENT

Jennifer Peters	X	
Tom Marjerison	X	
Phil Ahrens	X	
Craig Wolff	X	
Samuel Carter	X	

OTHERS

Nicholas Ciarimboli, Code Enforcement Officer

Erin Zwirko, Planning Director

Wendy L. Simmons, Administrative Assistant, Recording Secretary

II. PUBLIC HEARING

There were 10 +/- people from the public in attendance.

Jennifer Peters called the meeting to order at 7:00 PM.

III. NEW BUSINESS

The Board took the two agenda items out of order.

Adopt a Policy for Remote Participation in General Board of Appeals Meetings.

Beginning on August 1, 2021, the state requires public bodies to return to in-person meetings. The legislation that allowed the General Board of Appeals to hold meetings remotely to guard against COVID-19 expired on July 31, 2021. The General Board of Appeals will review the proposed remote participation policy and a vote will be taken. The General Board of Appeals may also consider adopting a limited emergency declaration to allow fully remote meetings.

The Board discussed the Remote Participation Policy.

The motion was made to adopt the Remote Participation Policy.

Such motion moved by Phil Ahrens, seconded by Craig Wolff voted 5 in favor, 0 opposed.

Administrative Appeal of Code Enforcement Officer Building Permit Approval, under Chapter 701, Article VII.B.2.a; Eugene Miller, et al., Appellant, Re: Building Permit approval for an Accessory Structure, MDR Zone, Two Towns LLC, Ed Libby, Owner; Map 30 Lot 14.

Administrative Appeal of the issuance of a Building Permit by the Code Enforcement Officer. The appellant is requesting that a Building Permit (No. B21-

187, dated August 12, 2021) issued for an accessory structure be vacated. The appellant argues that the accessory structure is not an accessory structure and is a single-family dwelling. Under Chapter 701, Article VII.B.2.a the General Board of Appeals has jurisdiction to hear and decide appeals of the Code Enforcement Officer's decision.

Tom Marjerison recused himself due to a conflict of interest with his employer and the permit holder, Ed Libby.

Craig Wolff and Jennifer Peters disclosed they know the Sangers and the Millers through the community; but felt they could be impartial. Mr. Libby had no objections.

The Board discussed the requirement of Standing.

Sean Turley, attorney for the applicants, presented the appeal application. The aggrieved persons are the neighbors on Astilbe Lane. The location of the property is at the entrance to their subdivision. If the appeal is denied the accessory structure will impact their quality of life and property values and they will suffer injury due to the project.

The Board questioned if any of the appellants are direct abutters? If their Homeowners Association is still active? If the road is public or private? S. Turley – The appellants are not direct abutters; but live in the cul-de-sac on Astilbe Lane. The Homeowner's Association is not active and the road is a public road.

Ed Libby, Permit holder presented

His property is not part of the Astilbe Lane subdivision and not subject to their covenants or the HOA. His property pre-dates the subdivision and Portland St. and Astilbe Lane are public roads that front both sides of his property. Simply driving by the accessory structure should not be a hardship and there is no evidence the accessory structure will impact property values. He disputes the appellants have standing because they are not direct abutters to the property. He's spoken directly to the abutting neighbor, and they have no concerns, nor do the neighbors across the street. C. Ahrens questioned if the direct abutters had submitted written comments? E. Libby – no, he only had a conversation with the direct abutter.

The Board discussed Standing and took the following vote:

Findings of Fact and Conclusion of Law:

The Appellants **do** have Standing. The General Board of Appeals found that the appellants being located on a small cul-de-sac road, Astilbe Lane, which is only accessible via Portland Street where the subject property is located do suffer an injury different than the general public.

Findings and conclusion moved by Phil Ahrens, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

The Board discussed the requirement of Timeliness and took the following vote:

Findings of Fact and Conclusion of Law:

The appeal **was** timely filed within 30 days of the issuance of the Building Permit.

Findings and conclusion moved by Phil Ahrens, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

The Board discussed the requirement of Jurisdiction and took the following vote:

Findings of Fact and Conclusions of Law:

The General Board of Appeals **does** have jurisdiction under Chapter 203, Article F and Chapter 701 Article VII.B.

Findings and conclusion moved by Craig Wolff, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

The Board considered the Merits of the Appeal:

Chair Peters summarized the General Board of Appeals responsibility. They are responsible for reviewing the merits of the Building Permit approved and issued on 8/12/21 only. They are not reviewing the previously submitted Contract Zone or the merits of the Minor Site Plan for the Accessory Dwelling Unit.

S. Turley – The exhibits presented point to Mr. Libby's intent to eventually turn the accessory structure into a housing unit. The accessory structure proposing to be relocated has a floor plan with 2 bedrooms, 1 bath, a lounge and workout space. The creation of a kitchen in the accessory structure would be simple, creating another house. The Town Council previously denied a Contract Zone that would have allowed Mr. Libby to split the lot and place a second house on the new lot. This building permit application for an accessory structure appears to be a way to circumvent the denial from the Town Council. The definition of an Accessory Structure states it should be incidental and subordinate to the primary structure and support the primary structure. For example, a shed, art studio, garage, barn, etc. The proposed accessory structure does not meet the criteria. They argue it is not strictly an accessory structure for a bunk house or home office, but when all the spaces in the accessory structure are added up it creates a dwelling unit, thus making it not incidental or subordinate. The installation of a second driveway

leaves the impression that it is a separate structure that is not incidental or subordinate. Based on the floor plan it appears to be a second house that would make for an easy rental. The Minor Site Plan for an Accessory Dwelling Unit and the building permit were submitted and reviewed simultaneously. With the ADU approval there currently is no primary structure on the property.

E. Libby – The appellants are speculating as to what the structure might be. Discussion of the Contract Zone confuses the issue and is irrelevant. The Contract Zone was requested for a change in zoning to create more affordable housing in Yarmouth, which was denied by the Town Council. This is a separate and distinctly different application. A property owner is entitled to have an accessory structure on their property if it meets zoning setbacks. The structure is a shell and because it once was a house doesn't mean it must remain as one. The existing dwelling at 538 Portland St. is currently vacant.

The Board had questions regarding the ADU application which was reviewed concurrently with this building permit? N. Ciarimboli – A Minor Site Plan for an ADU was submitted at the same time and approved. An ADU approval is the approval of a concept and an additional building permit is required to define a structure as an ADU. A Minor Site Plan approval for an ADU is only good for 1 year. A building permit for an ADU has not been submitted by Mr. Libby. It is not uncommon for a property owner to build a smaller structure and live in it while they build a larger home then convert the smaller structure to an ADU. The ADU application submitted would approve the concept to convert the existing home on the property the ADU and the proposed accessory structure the primary dwelling.

The Board questioned the requirement of one dwelling being owner occupied and how an LLC would occupy one of the structures? This property is owned by Two Towns Property, LLC. N. Ciarimboli – According to the Town attorney one of the members of the LLC must occupy one of the dwellings.

The Board questioned what Mr. Libby's vision of the property is? E. Libby – The second building would be used for relatives and an office.

The Board questioned the Code Enforcement Officer's decision criteria in determining if a building is incidental and subordinate. N. Ciarimboli – Considers the principal use of the property, confirms the structure will not constitute a use that may not be permitted and considers existing structures, and definitions.

The Board questioned the definition of a kitchen and cooking appliance? N. Ciarimboli - Anything that could be used for cooking food defines a kitchen.

Chair Peters opened to public comment.

Susan Prescott – 58 Hillside St.

Concerned about ADU's in general. In this case the Board cannot disregard the

history of the property and that Mr. Libby requested a Contract Zone for a separate dwelling. Questioned how an ADU can be granted for the existing house on the property when currently there is no primary residence? Concerned about the calculation of square footage and the deduction stairwells to get the structure under 900 sf. Believes this is circumventing the process to get 2 houses on the property.

Dennis Welsh, 119 Princes Point Road

Questioned if you need to be a resident of a structure to apply for an ADU? If you need to be a resident of the Primary Structure to apply for an ADU? Do you need to be a resident of a structure on the property to apply for an accessory structure? Questioned if there were any restrictions on short-term rentals? N. Ciarimboli – The dwelling unit does not need to be owner occupied to apply for an accessory structure. Proof of residency in one of the units is required after the Minor Site Plan is approved. The deed restriction also reinforces one of the units is required to be owner occupied. Currently the Town has no restrictions on short-term rentals.

Peter Senger, 54 Astilbe Lane

Questioned the quantity of Minor Site Plans for ADU's that are submitted each year in conjunction with an accessory structure? Questioned the Minor Site Plan approval date being prior to the building permit approval? N. Ciarimboli – Minor Site Plan approvals take 6-8 weeks; so it is not uncommon for a site plan application and a building permit to be reviewed concurrently. He does not have exact numbers regarding the quantity of ADU's applied for.

Rhonda Senger, 54 Astilbe Lane

Concerned this is a work around and a way to circumvent the Town Council's denial of the Contract Zone. Concerned about the quality and use of the proposed accessory structure. Concerned about the impact on her neighborhood.

Gene Miller, 59 Astilbe Lane

The proposed accessory structure looks more like the primary dwelling. Concerned about the separate driveway. This structure is not incidental and subordinate to the existing primary structure. Concerned this circumvents the Town Council's denial of the Contract Zone.

Jayshree Patel, 47 Astilbe Lane

Concerned this circumvents the Town Council's denial of the Contract Zone.

Rebecca Rundquist, 55 West Elm St.

Concerned the GBA set a precedent with the ruling on her appeal regarding 53 West Elm St. and how accessory structures can be used. Concerned the Town Council has not acted regarding short-term rentals. Concerned there is no enforcement of the rules and guidelines.

Public comment closed.

The Board questioned if Mr. Libby built a new structure would there still be an objection? S. Turley – They would continue to argue the structure is not incidental and subordinate. When you add up all the rooms proposed in the structure, they equal a house not an accessory structure as defined.

The Board discussed the definition of incidental and subordinate and if the structure meets the criteria. The structures are substantially similar, and the accessory structure does not appear to be dependent upon the primary structure. The separate driveway entrance is significant as is the distance from the primary structure to the accessory structure.

The Board took the following vote:

Findings of Fact and Conclusions of Law (Correct determination if appeal is granted):

The General Board of Appeals discussed this motion and determined that it was not necessary as the parties agreed that the structure is not a Single Family Detached Dwelling as defined by the Chapter 701, Zoning Ordinance.

- Motion to find that there **is** error in the Zoning Determination made by the Code Enforcement Officer that as an Accessory Structure the proposed structure meets the intent of the ordinance and is in fact incidental and subordinate to the existing Single Family Detached Dwelling at 538 Portland Street and therefore **grant** the appeal.

Findings of Fact and Conclusions of Law (Correct determination if appeal is granted):

The General Board of Appeals found that the structure is not an accessory structure and is not incidental and subordinate to the existing Single Family Detached Structure at 538 Portland Street for the following reasons:

1. The size of the structure does not determine whether an Accessory Structure is incidental and subordinate, but the grouping of spaces proposed for the specific structure at 538 Portland Street exceed what could be reasonably considered incidental and subordinate;
2. The distance of the structure from the existing Single Family Detached Structure is further than what could reasonably considered supporting the primary dwelling unit; and
3. The addition of the second driveway on Astilbe Lane to serve the structure suggests that the use of the structure is not incidental and subordinate to the existing Single Family Detached Structure.

Findings and conclusion moved by Craig Wolff, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

IV. OTHER BUSINESS

None

V. ADJOURNMENT

Without objection the meeting adjourned at 10:30 PM

Respectfully submitted:

Wendy L. Simmons, Administrative Assistant, Recording Secretary