

Jennifer Peters
Chair, Board of Appeals
Town of Yarmouth
200 Main Street
Yarmouth, Maine 04096

October 3, 2021

Re: Appeal of Building Permit No. B21-187

Dear Chair Peters:

I am the owner, as a member of Two Towns Property LLC, of the property subject to the above cited building permit appeal. I have read the appellant's brief and supporting documents, and wish to go on record here to correct several egregious and fundamental misstatements of fact made by attorney Turley, make a request to disqualify Tom Marjerison from hearing the appeal, and submit supporting documentation. I look forward to the opportunity to be heard by the GBA this coming Wednesday night at 7pm.

Conflict of Interest

First and foremost, I am requesting Tom Marjerison be disqualified from participating in any part of this appeal. Mr. Marjerison has previously prejudiced himself against me and my efforts to utilize my property at 538 Portland Street. Mr. Marjerison has no direct connection to my property. He is not a neighbor. Nonetheless, he was the only "non-neighbor" to speak publicly opposing a past proposal on this same property (CZA) in December 2020. Minutes to that meeting are attached as part of Exhibit 1. Mr. Marjerison is an associate at the same law firm as John Veilleux, the abutting property owner who led the neighborhood opposition to my CZA plan. Mr. Marjerison specifically spoke against adding an additional affordable home to my property. In addition, they co-founded and continue to serve on the Board of Casco Bay Arena, as President and Vice President. Needless to say, Mr. Marjerison has created a clear conflict of interest by his connection to past opposition to me and my property and should be disqualified.

Lack of Standing

I would assert that the appellants do not have standing, and therefore the appeal should be dismissed without ever getting to the merits. The appellants have failed to demonstrate how they qualify as aggrieved people. In order have standing to appeal, you must be an aggrieved person. Chapter 203, nor any part of the Yarmouth code defines an aggrieved person, therefore its common meaning must be accepted. According to Merriam Webster it is defined as follows: **"a person sufficiently harmed by a legal judgment, decree, or order to have standing to prosecute an appellate remedy."** The appellants have failed to show how they have been harmed by the decision, and therefore have no standing to appeal. All they present regarding standing are the various deeds showing they own property in Yarmouth. Appellants fail to establish what harm has come, or will come to them as a result of issuing the permit. Since none of them have established that they have been sufficiently harmed to qualify as an aggrieved person, they have no standing to appeal. I would ask that the GBA dismiss the appeal for lack of standing by the appellant.

Exclude Irrelevant Material

I would request that the Board exclude all reference to my prior CZA application and my Minor Site Plan application as irrelevant. As a matter of policy, Chapter 203 C. 2. provides for the exclusion of irrelevant material.

CZA: My CZA request was completely independent of, and has no connection with, the building permit being appealed, despite attorney Turley's statements to the contrary. The CZA was purely a *zoning* change request with no site plan review. No specific structure was ever represented, certainly not 136 Old County Road, as attorney Turley would lead you to believe. Attorney Turley's statements amount to a pure fabrication of facts, and possibly subject him to sanctions under Rule 11. This is particularly concerning as it relates to assertions of what I did or said, which are completely made up. None of the following statements presented by attorney Turley have any basis in fact: 1. "The structure is what Libby accurately represented it to be throughout his efforts to obtain a CZA" 2. "Libby sought to subdivide the lot; relocate, *in his words* (emphasis added), an 'additional home' to the property ("House II") 3. "House II, which would be relocated from Old County Road, is shown below in its current location." Again, the building at 136 Old County Road was never represented as part of any prior proposal, nor was the concept to "relocate" ever contemplated in any prior application or presentation. Attorney Turley makes up these facts to suit his narrative and mislead the Board. Again, the CZA requested a zoning change only and the building permit under appeal was for a foundation only.

Minor Site Plan: My Minor Site Plan Application for an ADU is also irrelevant to the building permit under appeal. The appellant conflates the issues and ignores the temporal distinction between the various permits. In this case, the appellant attempts to insert events that have not yet occurred at the time the appealed permit was issued, nor have any relevance to it. Of note, the use or form of a building can be changed at any time with additional or subsequent permits properly issued by the Town.

Merits

The actual building permit under appeal cannot be ignored or disregarded, as attorney Turley seems to do. A plain reading of the permit is all that is needed to understand what the permit sought: "construct a foundation to accept a 24x40 structure". The Conditions of Approval specifically state the accessory structure does not constitute an additional dwelling unit. The associated permits (driveway and street opening, Exhibit 2) confirm they are for an accessory structure, not a dwelling unit.

The 24x40 structure contemplated in the permit, and identified as being currently located at 136 Old County Road, does not meet the Town's definition of Dwelling Unit, and therefore the appellant's entire appeal fails. Attorney Turley states that his grounds for appeal are simple, that the building is a dwelling unit. That is a gross misstatement of fact, and his argument is fundamentally flawed and misrepresentative of the actual facts. ***The subject structure has no kitchen, and therefore cannot be a dwelling unit, as defined by Yarmouth code.*** The structure does not have a cooking appliance, refrigerator, sink, hot or cold water, utensil storage, or 4 feet of contiguous counter top. Exhibit 3 shows a photo of the space formally used as a kitchen and now planned for a lounge area. The structure has not been habitable for a couple years. It has been winterized and disconnected from electricity and water for some time. The permit includes a floor plan of the structure with the planned uses of each room labeled, which was requested by the CEO as additional information to the original permit (foundation only). *A kitchen is not one of the rooms shown on the plan.* Without the requisite components to constitute a dwelling unit, the structure cannot be defined as a dwelling unit, no matter how hard attorney Turley wishes it to be to support his grounds for appeal.

The permit is consistent with Chapter 301 as it complies with building codes, allowed uses, and conforms to setback standards for its zone. That the accessory structure may, by some methods, be considered a larger structure than the existing house, its use is accessory to the primary use of the dwelling unit. To apply the appellant's logic that an accessory structure cannot be physically larger than the primary use structure would fly in the face of all sensibility and past practice in Yarmouth and elsewhere. For example, barns larger than the associated house are an ubiquitous New England form and are customarily approved in Yarmouth to this day. Nowadays, while the barn form is still used, the traditional agricultural use is often replaced with such things as home gyms, vehicle or boat storage, additional living area, etc.

Conclusion

Appellant's entire grounds for this appeal, as stated at the beginning of his brief, is simple, that the subject structure is a Dwelling Unit. However, he produced no evidence to support that claim. All evidence is to the contrary. Since the subject structure is not currently a Dwelling Unit as defined by Yarmouth's code, and the subject permit was for an accessory structure with no kitchen shown on its plan so cannot qualify as a Dwelling Unit, and the subject permit has Conditions of Approval specifically stating that it shall not constitute an additional Dwelling Unit, the appeal should be dismissed immediately without delay.

Sincerely,

Ed Libby
Member, Two Towns Property LLC