

Supplemental Memorandum by Appellee Janice Cooper

In re: 53 West Elm St. Studio

Issue:

If an owner sleeps in a non-ADU out-building (“studio”) located on the same plot as her principal house, is this a permitted use in a residential zone when short term rental (STR) guests are in the primary structure at the same time?

Argument:

Appellant’s argument is built upon a false premise: that the studio is a “dwelling.” By definition, IT IS NOT. See memoranda of Alex Jaegerman and also of Janice Cooper. Rather, it is an out-building that does not meet the requirements of a dwelling because (1) this Board has held it may not be used as an accessory dwelling unit (ADU) may be charged and also (2) because it does not contain all the features necessary to make it a stand-alone, inhabitable place to dwell, to wit, it lacks a kitchen. Accordingly, my property contains only one dwelling unit, which consists of the principal house. The studio is an out-building, like a garage, which may be used for various purposes, including a studio and sleeping. Sleeping is permitted in such a structure only if it has been granted a certificate of occupancy, which is true here. Saying, as appellant does, that it is a “dwelling” does not make it so.

Furthermore, it is also true that the owner does not **live** in the studio and hence she does not constitute a household. The Code

effectively defines living as including preparation of meals in a kitchen. The Appellant's contention that the owner prepares or eats meals in the studio is pure speculation and is untrue. The studio is not equipped to allow her to do so. In fact, on a daily basis, she prepares meals for herself and her homebound former husband at his house. Since the Appellant tracks and records the owner's movements and correspondence, she presumably is aware of this. (See Appellant's exhibits presented at the previous hearing.)

Accepting the Appellant's argument would have far-reaching, unintended, adverse consequences for Yarmouth. For example, her proposed reading of the ordinance would apply whenever the owner of a dwelling rents out a spare bedroom to a non-family member who does not engage in the full range of listed housekeeping activities. This is precisely the situation presented by most STRs. Airbnb and other online renting platform hosts often if not usually do not lease their entire house. Rather, they lease one or two rooms in their house while they remain on the premises.

If the Board rules that the instant case violates the ordinance, many if not most STRs in Yarmouth will be illegal. This appears to be desired by the appellant (see footnotes 2 and 3 of her Appeal, a one-sided litany of the downsides of STRs). However, Yarmouth does *not* ban STRs nor even specifically regulate STRs. It would be a miscarriage of justice to use this case to achieve a result that the Town thus far has rejected. Whether or how STRs should be regulated is a decision best left to the Town Council or State Legislature, which can assess the economic and social interests of the community with respect to STRs.

A rule that a “dwelling” can accommodate only one household at a time is irrelevant here because **the only family or household residing in a dwelling on this property is the STR group in the principal structure.** Thus, having STR guests and the owner on the property at the same time is legally and fully permissible in Yarmouth.

Respectfully submitted,

/s/

Janice Cooper (Appellee)

October 29, 2020