Judy Colby-George Chair, Planning Board Town of Yarmouth 200 Main Street Yarmouth, Maine 04096

Re: Appeal of Minor Site Plan Approval for 538 Portland Street

#### Dear Chair Colby-George:

I am writing in response to the 9/21/21 letter to you from attorney Turley. The entirety of his letter includes many mischaracterizations, false statements, and inaccuracies which I will not address individually. Rather, I wish to simply address their three "grounds for appeal", discuss the threshold question of standing, reiterate the purpose of our ADU ordinance, and confront the appellants' misrepresentation that I am attempting to "evade a prior Town Council vote" (Turley), or "trying to circumvent Town regulations". Nothing could be further from the truth.

#### **ADU**

Purpose: The purpose of this section is to promote the public health, safety and general welfare of the community <u>by providing diverse housing choices and to help increase the supply of housing without new land acquisition costs.</u>

You would have to be living under a rock to not be aware of how the Covid-19 pandemic has exposed systemic supply failures in the housing market, most critically at the lower income/first time buyer level. Cities and states across the country are grappling with a market millions of houses short of what is needed to accommodate demand as the largest cohort of first-time home buyers since the baby boomers comes of age. Consensus amongst planners and politicians is clear as to the culprit: large lot single family zoning and incumbent NIMBY neighbors, and there is a wave of reform being undertaken in every corner of the country. In Maine, our legislature recently formed a commission to study how zoning might be implemented at the state level in order to implement more fiscally practical, socially equitable, and climate conscious zoning at the local level since municipalities have failed to do so for decades. Yarmouth recently formed an affordable housing committee to seek solutions locally. One strategy that is being used ubiquitously is accessory dwelling units, or ADU's. It is unfortunate that my attempt to utilize this tool, available to any lot owner in Yarmouth, has been attacked by extreme NIMBYism in the form of this frivolous appeal. It is this type of extreme exclusionary mentality that is exacerbating our affordable housing crisis, making the process more time consuming, more costly, and pitting the incumbent owner class with those trying to get a foothold on the American dream, or simply availing their children to a quality education. I continue to ask myself, why is it that the thing we need

the most (affordable housing) is the most difficult thing to achieve. In this case, the answer is clear: neighbors willing to do anything to maintain their status quo, even attack private property owner's rights that are clearly provided for within our zoning ordinance. Quincy Hentzel, President of the Portland Chamber of Commerce, describes this problem and possible solutions in a very thoughtful letter to the commission now studying zoning reform in Maine. I recommend it to everyone. https://legislature.maine.gov/doc/7238

# Standing

Yarmouth's site plan ordinance states that minor site plans are appealable by the applicant and the abutter. Chapter 702 Article 1.F.3. Abutter is not specifically defined within Yarmouth's zoning ordinance. In that case, the zoning ordinances states that, "Terms not defined shall have the customary dictionary meaning." Chapter 701 Article 1D. I have attached a copy of the Merriam Webster's Dictionary page that defines abutter. Clearly, the appellant's property is not contiguous with mine. They do not adjoin, or share a common boundary with my lot. Therefore, they are not abutters as defined by Yarmouth's ordinance and do not have standing to have their appeal heard by the Planning Board. While others, including appellant courts, may use a different definition of the term abutter, the Planning Board has no choice but to follow Yarmouth's ordinance, which specifically states an abutter is defined by the dictionary and is an adjoining property owner. Beyond lacking standing by not being abutting property owners, the appellants have also failed to demonstrate any harm or injury that they have, or will have, as a result of the minor site plan being approved, which includes the existing home being designated as an ADU. No changes in use are proposed for the ADU, nor any changes to the exterior of the structure within which the ADU will exist. Based on the above, I would ask that the Planning Board take up this threshold issue of standing at the very beginning of its hearing and move to deny the appeal due to lack of standing.

# **Grounds for Appeal**

- 1. The appellant's first ground for appeal relies on the assertion and assumption that an accessory structure now exists on the lot and cannot be used as a dwelling unit. An accessory structure does not exist, nor is there any permit for one to be there any time in the future. The appellant's grounds fail since the facts stated are simply not accurate.
- 2. The appellant's second ground for appeal again relies on the premise that an accessory structure exists on the lot and that it cannot be used as a dwelling unit, therefore the need for a primary dwelling cannot be met in order for the existing house to be designated as the ADU. Again, the appellant's premise is factually incorrect, given the 10/6/21 vote of the GBA to vacate the accessory structure permit. I think a bit of clarification of process would be helpful. At this point, the applicant has applied for and received a Minor Site Plan approval for an ADU, as provided for in Chapter 702 of Yarmouth's zoning. This could be viewed as something similar to a concept plan. The approval required that the application comply with 23 technical standards. The application met all 23 standards, and was granted approval with appropriate conditions of approval. However, no building permits have been issued in conjunction with the site plan.

- That is step 2. Going forward, in order to implement the Minor Site Plan, the applicant will apply for a building permit for a new dwelling unit to be placed on a recently completed foundation. Part of that building permit will include designating the new dwelling unit as the principle dwelling unit and the existing dwelling unit as the ADU. Those permits have not yet been applied for and are not part of this minor site plan application, nor should be considered in this appeal, since they do not exist at this time.
- 3. Interestingly, appellant appears to defeat his third ground of appeal himself, by correctly stating the existing structure "would require a variance if it were a new structure being built on or relocated to 538 Portland." But the fact is that the structure that the ADU is within, is not a new structure being built nor is it being relocated to 538 Portland. The existing structure does not require a variance since it is a grandfathered structure that has been in existence prior to the Portland Street right of way being expanded. The result being that the house became nonconforming as to setback from Portland Street. The structure's current residential use will not change and appellant's argument that the Planning Department should disallow the continued residential use, ADU, within the structure contravenes the intent of our ordinance, which is allowing for continued use. Our zoning ordinance specifically states that legally nonconforming structures can continue. Chapter 701 Article III.A.1. In fact, if a structure is legally nonconforming as to setback, the ordinance even allows for expansion of the structure so long as it is not expanded in a way that makes it more nonconforming. Additionally, such a strict interpretation as appellant suggests also contravenes the very purpose of the ADU ordinance, as stated above.

#### ADU is a Property Right.

Next, I would like to address the final paragraph of appellant's grounds for appeal where he states that fundamentally I am trying to evade the vote of the Town Council denying my CZA request. This goes hand in hand with the other narrative that the appellants have put forth in multiple letters to the Planning Department saying "we feel Mr Libby is trying to circumvent the towns regulations and say they do not apply to him". (Paytel) To set the record straight, if anything could be interpreted as "circumventing town regulations", that would be the CZA process itself. By its very nature, the CZA process seeks approval for a project that does not meet existing town regulations and therefore requires a change in the zoning for it to be approved. Contrary to that process, this ADU/Minor Site Plan application is actually following town regulations. Every property owner in Yarmouth has the same exact right to apply for an ADU, and I am no different. I am not trying to evade the results of the Town Council vote; I am simply exercising my rights as a property owner to use my land as the Town allows. I could have just as easily (perhaps more easily!) applied for a the same ADU/Minor Stie Plan without ever having attempted the lot split/workforce housing CZA. Would the appellants still be objecting? The TC denied my request for a lot split, but that decision did not foreclose all other possible uses for my property made available through our ordinances. Ironically, at the 1/27/21 Planning Board presentation for my CZA, I made a specific presentation as to how similar what was allowed by right (ADU plus house) was to the CZA request, in form, density, and use. It occurs at 43:30 - 48:00 of the video. I have been completely up front about possible directions for the property. The accompanying slides from that meeting are

attached. Unfortunately, some of the neighbors in Astilbe Lane Subdivision don't want people who choose to rent living near them, they don't want folks who come from lower socio-economic status living on "their" street (public road), and they don't want older homes than their own nearby because it "may affect the way our neighborhood is viewed". (Pizzo). Does Ms. Pizzo realize that mobile homes are allowed on my lot? They have been clear about this over the course of 9 months through dozens of letters and oral comments. They want to impose their private deed covenants and exclusionary attitude upon land outside their subdivision by infringing upon my private property rights, simply because we are on the same public road. It is not lawful, nor is it very neighborly. Yarmouth's motto is "our latchstring always out". I wish that was the case here.

Thank you for your	consideration.
--------------------	----------------

Sincerely,

Ed Libby

evidence of notification to the Director of Planning and Development. The application is distributed to the Town Engineer, Director of Planning and Development, Code Enforcement Officer, Fire Chief, Police Chief and the Yarmouth Water District. After a ten (10) day public comment period the Director of Planning and Development shall review all submitted comments and in writing approve, approve conditionally, or deny the application in accordance with Section I.J. The decision of the Director of Planning and Development as well as findings of fact, shall be provided in writing to the applicant, Chairman of the Planning Board, Town Manager, and other Town staff within fourteen (14) days subsequent to the end of the public comment period. The finding of fact shall consist of the rational basis of the Director of Planning and Development's decision. Prior to distributing an application to Town Officials, the Town Planner must deem the application complete pursuant to Section I.G.3.

- 3. Appeals: The Director of Planning and Development's decisions regarding minor site plans are appealable by the applicant or an abutter to the Planning Board within 30 days of the date of the issuance of the decision. Site plan decisions of the Planning Board are appealed to the Cumberland County Superior Court.
- 4. Applications requiring General Board of Appeals Review: Before deeming an application a complete final application, the Planning Board or Director of Planning and Development shall require from the applicant, evidence of the General Board of Appeals' approval, for applications requiring review by the General Board of Appeals.
- 5. Applications requiring other Public Agency Review:
  - a. The Planning Board or Director of Planning and Development may approve complete final applications subject to the condition that all necessary permits be received from agencies such as, but not limited to, the Army Corps of Engineers, Maine State Department of Environmental Protection, or Maine State Department of Health and Human Services. However, the Planning Board or Director Planning and Development may require that approvals required by state or federal law be submitted to the Town prior to final approval upon finding that the permits from the state or federal agencies may have a significant effect on the site plan application, such as, but not limited to, the potential re-citing of buildings or parking areas, the relocation of driveways or the change of storm water management features.
  - b. Review by Municipal Committees: The Planning Board may request copies of the application to be forwarded by the applicant to the Yarmouth Lands Management Committee and Sports and Recreation Committee, Harbor and Waterfront Committee or other Municipal committee. The comments of the committees are advisory to the Planning Board and shall pertain to the application's conformance with Section I.H (Review Criteria) of this ARTICLE. The Planning Board may postpone final decisions regarding the application

# ZONING ORDINANCE TITLE, PURPOSE, INTENT AND DEFINITIONS

#### **ARTICLE I**

#### A. TITLE

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Yarmouth, Maine".

# **B. PURPOSE**

The purpose of this Ordinance is to promote the health, safety and general welfare; to encourage the most appropriate use of land throughout the Town; to promote traffic safety; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources, and to provide for adequate public services.

# C. INTENT

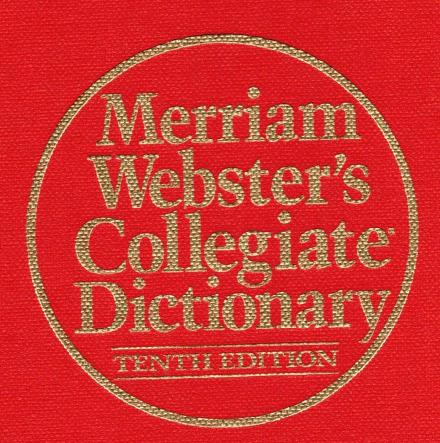
It is the intent of this Ordinance that any use not specifically allowed as either a permitted or special exception use is specifically prohibited. As new uses occur over time, or existing uses are found to be omitted, the only procedure allowing such uses is by action of the Town Council in accordance with ARTICLE IV.U

# D. DEFINITIONS

The word "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual; the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed", or "arranged to be used or occupied", the word "Building" includes the word "Structure", and the word "Dwelling" includes the word "residence", the word "lot" includes the words "plot" or "parcel

In the case of any difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control. (Note: To assist in ease of reference, an effort has been made throughout this Ordinance to capitalize defined terms. However, any failure to do so in a particular instance shall not change the meaning of such term as defined in this Ordinance.)

Terms not defined shall have the customary dictionary meaning. Other terms shall be defined as follows:



2: the tail 4 l) f abesse a situa

REOCCU

propri-missing

advance

thought ED; also reoc b-sent-

ity from inthium, uropean ed with

s, fr. pp. alcohol) constitu or usual conse, let us without a sur work alar conption, or UNQUES dards of ner from inits> on abso-

nal refer-being the tude a level at der stannematical

ure of a

esent in a

celestial compare ard scale

numerical he sum of

erized by specif: a of recon-

b : gov-

vocacy of andard or -tic \ab ing to an

intransi-language ake absolved: ab-

- more a quences o

fr. ab- + ulp down] e capacity te in : AC-: USE UP. OSS Wholly cho (proardships) (3): ASSUME, BEAR (the expenses were ~ed by the company) b: to transform (radiant energy) into a different form usu, with resulting rise in temperature (the earth ~s the sun's rays) — absorb-abil-i-ty \\_ob-\sorb-abil-i-ty \\_ob-\so

common logarithm of transmittance
sor-bency \ab-\sor-ban(t)-\seta\_i - 2\dotr-\n, pl - \cies (1859) 1: the
alty or state of being absorbent 2 or ab-sor-ban-cy: ABSORBANCE
sor-bent also ab-sor-bant \-bont adj [L absorbent-, absorbens, prp.
absorbere] (1718): able to absorb \as \approx as a sponge) — absorbent

absorbant n

- orb-ing adj (1876): fully taking one's attention: ENGROSSING (an

- ovel) — ab-sorb-ing-ly \-bin-le\ adv

- ovel \ - ab-sorb-ing-ton(t)s, -'zorp-\ n [absorption + -ance] (ca.

- ovel) — the ratio of the radiant energy absorbed by a body to that inci-

1): the ratio of the radiant energy absorbed by a body to that incisupport in the process of absorbing or of
the process of absorbed of the process of absorbing or of
absorbed — compare ADSORPTION b: interception of radiant
sy or sound waves 2: entire occupation of the mind ⟨~ in his
 — ab-sorp-tive \-tiv\ adj
 prion band n (1867): a dark band in an absorption spectrum
 prion line n (ca. 1889): a dark line in an absorption spectrum
 prion spectrum n (1879): an electromagnetic spectrum in
 the a decrease in intensity of radiation at specific wavelengths or
 est of wavelengths characteristic of an absorbing substance is mani desp. as a pattern of dark lines or bands
 privity \ab-\sorp-\tiv-\tilde{t}, \alpha\tilde{c} \tilde{t} = \tilde{t} \ti

### (1521): the act or practice of abstaming — ab-sten-tious and in the abstinence \"ab-sto-non(t)s\ n [ME, fr. MF, fr. L abstinentia, fr. abstinence, prp. of abstinēre] (14c) 1: voluntary forbearance esp. indulgence of an appetite or craving or from eating some foods appetite or craving away, fr. abs., ab; if there are a consistency is craving a condition or craving or construction of a construct

action 4a straction 4a - 1 sense 3 usu 'ab-1 vt (1542) 1: REMOVE, at 2: to consider apart from application to or association with cular instance 3: to make an abstract of: SUMMARIZE 4: to away the attention of 5: STEAL PURLOIN ~ w: to make an abstract-able \cdot\text{-'strak-to-bol}, \text{-'strak-\cdot\cdot\cdot} ab-

ab-stract-able \-'strak-tə-bəl, -,strak-\ adj — ab-stract-ed \ab-'strak-tə-d, \ab-\ adj \) (1643) 1: PREOCCUPIED ABSENTthe \[ \sigma \) look of a professor \[ 2 : ABSTRACT 4 \( \sigma \) geometric
\[ -ab-stract-ed-ly \( adv - ab-stract-ed-ness \) n
\[ -ab-stract-ed-ly \( adv

strak-tiv, 'ab-\ ad' - ab-strac-tion-ism \ ab-strac-tion-ism \ ab-strak-shə-ni-zəm, əb-\ n (1926): the principles ace of creating abstract art — ab-strac-tion-ist \-sh(ə-)nist\

of title (1858): a summary statement of the successive consend other facts on which a title to a piece of land rests see hab strius, ab \ adj [L abstrusus, fr. pp. of abstrudere to consend other facts on which a title to a piece of land rests see hab strius, ab \ adj [L abstrusus, fr. pp. of abstrudere to consend of the consender of the consend

the belief that the universe is irrational and meaningless and that the search for order brings the individual into conflict with the universe—compare EXISTENTIALISM—ab-surd-ist \-dist\ nor adj
ab-sur-dity \= 25-rd-1e, \frac{1}{2}-zer\-n. np! -ties (1528) 1: the quality or
state of being absurd: ABSURDNESS 2: something that is absurd
abub-ble \= 25-b-b-b| adj (ca. 1869) 1: being in the process of bubbling 2: being in a state of agitated activity or motion: ASTIR
abuild-ing \= -bil-din\ adj (1535): being in the process of building or
of being huilt

of being built

abu•lia \ā-'bū-lē-ə, -'byū-, ə-\ n [NL, fr. ²a- + Gk boulē will] (ca. 1864)

: abnormal lack of ability to act or to make decisions — abu•lic \-lik\

abundance \a-bundance \a-bundance \a-bundance \a-bundance \a-bandance \a-bundance \a-bandance \a-banda

abuse b: physically injurious (~ behavior) — abu-sive-ly adv—abu-sive-ness n
abut \alpha-bott \nabut-ted; abut-ting [ME abutten, partly fr. OF abuter
to border on, fr. a- (fr. L ad-) + bout blow, end, fr. boter to strike;
partly fr. OF abuter to come to an end, fr. a- + but end, aim — more at
BUTT, BUTT] vi (15c) 1: to touch along a border or with a projecting
part (land ~s on the road) 2 a: to terminate at a point of contact
b: to lean for support ~vt 1: to border on 2: to cause to abut
abu-ti-lon \alpha-by\u00fc-tell-i\u00e1n, t'\u00e4l-on \alpha [NL genus name, fr. Ar awb\u00fc\u00e4till\u00fc
abut-ti-lon \alpha-by\u00fc-t'\u00e4l-i\u00e4n agenus (Abutilon) of plants of the mallow
family often having lobed leaves and solitary bell-shaped flowers
abut-ment \alpha-bot-bit-ment\u00e4n (1644) 1: the place at which abutting
occurs 2: the part of a structure (as an arch or a bridge) that directly
receives thrust or pressure
abut-tals \alpha-bo-t'\u00e4z\u00e4n pl (1630): the boundaries of lands with respect
to adjacent lands

to adjacent lands abut-ter (>-bo-tar\ n (1673): one that abuts; specif: the owner of a contiguous property abut-ting adj (1599): that abuts or serves as an abutment: ADJOINING.

contiguous property abut-ting adj (1599): that abuts or serves as an abutment? ADJOINING. BORDERING
abuzz \2-b2\ adj (1859): filled or resounding with or as if with a buzzing sound (a lake ~ with outboards) (a town ~ with excitement) aby or abye \2-bi\ vt [ME abien, fr. OE ābycgan. fr. ā- + bycgan to buy — more at ABIDE, BUY] (bef. 12c) archaic: to suffer a penalty for abysm \2-bi-zsm n [ME abien, fr. MF abisme, modif. of LL abyssus] (14c): ABYSS (the dark backward and ~ of time —Shak.)
abys-mal \3-bi-zsm, a-\ adj (ca. 1656) 1 a: having immense or fathomless extension downward, backward, or inward (an ~ cliff) b: immeasurably great: PROFOUND (~ ignorance) c: immeasurably low or wretched (~ living conditions of the poor) 2: ABYSSAL — abyssos, fr. abyssos, di., bottomless, fr. a-+ byssos depth; perh. akin to Gk bathys deep] (14c) 1: the bottomless gulf, pit, or chaos of the old cosmogonies 2 a: an immeasurably deep gulf or great space b: intellectual or moral depths
abys-sal \3-bi-sol\ adj (1691) 1: UNFATHOMABLE a 2: of or relating to the bottom waters of the ocean depths
abys-sal plain n (1954): any of the great flat areas of ocean floor
Ab-ys-sin-i-an cat \absolute{1} \absolute{2} \and \absolute{2} \and \absolute{2} \absolute{2} \absolute{2} \and \absolute{2} \absolute{2} \and \alpha \absolute{2} \absolute{2} \and \and \absolute{2} \and \and \absolute{2} \and \and \absolute{2} \and \absolute{2

brownish hair ticked with bands of darker color ac—see AD.

-ac n suffix [NL -acus, fr. Gk -akos, var. of -ikos -ic after stems ending in -i-]: one affected with (hemophiliac) aca-cia \o-'ka-sho\ n [NL, genus name, fr. L, acacia tree, fr. Gk akakia] (14c) 1: GUM ARABIC 2: any of a large genus (Acacia) of leguminous shrubs and trees



Abyssinian cat

\a\ abut \a\ kitten, F table \ar\ further \a\ ash \a\ ace \a\ mop, mar \au\ out \ch\ chin \e\ bet \e\ easy \g\ go \i\ hit \i\ ice \j\ job \n\sing \o\ go \o\ law \oi\ boy \th\ thin \th \the \\u\ loot \u\ foot \y\ yet \zh\ vision \a, k, n, ce, ce, ue, ue, v, see Guide to Pronunciation

#### A. NONCONFORMANCE

1. Continuation of Nonconformance

It is the intent of this Ordinance to promote land use conformities. However, any lawful element of Buildings, Structures, land, or parts thereof existing at the time of adoption or amendment of this Ordinance, and made nonconforming by the provisions of this Ordinance or any amendments thereto, may be allowed to continue, subject to the provisions of this Section. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

# 2. Transfer of Ownership

Non-conforming Structures, Lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming Structure or Lot, subject to the provisions of this Ordinance.

# 3. Repair and Maintenances

This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and Structures including repairs and renovations which do not involve expansion of the non-conforming use or Structure, and such other changes in a non-conforming use or Structure as federal, state or local Building and safety codes may require.

#### **B. NONCONFORMING LOTS OF RECORD**

# 1. Non-conforming Lots

A non-conforming Lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a Variance, provided that such Lot is in separate ownership and not contiguous with any other Lot in the same ownership, and that all provisions of this Ordinance except Lot Area, Lot Width, and Road and Shore Frontage can be met. Variances relating to setback or other requirements not involving Lot Area, Lot Width, or Road or Shore Frontage shall be obtained by action of the General Board of Appeals.

#### 2. Contiguous Built Lots

a. If two or more contiguous Lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, if all or part of the Lots do not meet the dimensional requirements of this Ordinance, and if a principal use or Structure exists on each Lot, the non-conforming Lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with.

b. If two or more principal uses or Structures existed on a single Lot of record on the effective date of this Ordinance, each may be sold on a separate Lot provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with. When such Lots are divided each Lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

# 3. Contiguous Lots – Vacant or Partially Built

If two or more contiguous Lots or Parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, and if any of these Lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the Lots are vacant or contain no Principal Structure, then the Lots shall be combined to the extent necessary to meet the dimensional requirements of this Ordinance.

This shall not be construed to limit the development rights, as set forth elsewhere in this ordinance, of legally existing nonconforming lots of records which are changed in size or boundaries provided such lots do not become more nonconforming.

# C. NONCONFORMING BUILDINGS, STRUCTURES AND SITE IMPROVEMENTS

- 1. No Building or Structure or site improvements such as parking, Driveway or lighting as required under CHAPTER 702, which is nonconforming with respect to the space and bulk requirements of this Ordinance may be expanded, enlarged or increased in height unless such expanded or enlarged or higher portion complies with the space and bulk requirements of this Ordinance or a variance is granted by the Zoning Board of Appeals. However, a Building which is nonconforming with respect to yard setback requirements may be expanded if the area of expansion does not reduce the existing yard setbacks of the Building.
- 2. Any non-conforming structure which is wholly or partially removed, damaged or destroyed may be reconstructed or replaced provided that a permit from the Planning Department is obtained within two years of the date of said damage, destruction or removal. The Planning Board may, for good cause shown by the applicant, grant up to a one year extension of that time period. An as-built survey of existing conditions may be required at the discretion of the Planning Director or his/her designee prior to any demolition. An as-built survey of post construction conditions may be required at the discretion of the Planning Director or his/her designee prior to issuance of an occupancy permit.

Non-conforming structures damaged, destroyed or removed and not replaced within the above described time limits shall not be replaced unless said replacement conforms to all applicable codes and ordinances.

# D. NONCONFORMING USES OF LAND

- 1. No nonconforming use of land shall be enlarged or increased nor extended to occupy a greater area of land than that occupied at the effective date of adoption or amendment of this Ordinance.
- No nonconforming use of land shall be moved in whole or in part to any portion of the lot which was not occupied by such use at the effective date of adoption or amendment of this Ordinance.
- 3. If any nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located. A lot on which a non-conforming use is discontinued for a period exceeding two years, or is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension of that time period. In the Shoreland Overlay District the initial discontinued use shall not exceed one (1) year. This provision shall not apply to the resumption of a use of a residential Structure in the Shoreland Overlay District provided that the Structure has been used or maintained for residential purposes during the preceding five (5) year period.
- 4. Change of Use. An existing non-conforming use may not be changed to another non-conforming use unless the Planning Board determines that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety according to Special Exceptions criteria Article VII.B.2.b(1)(d) and Chapter 702 Site Plan Regulations Article I.H.

# **E. NONCONFORMING USES OF STRUCTURES**

- No existing structure devoted to a nonconforming use shall be enlarged, extended, or expanded except in changing the use of the structure to conforming use.
- Any nonconforming use may be extended throughout any parts of a Building
  which were manifestly in existence and arranged or designed for such use at the
  time of the adoption or amendment of this Ordinance, but no such use shall be
  extended to occupy any land outside such Building.

- 3. If a nonconforming use of a structure is superseded by a permitted use, the nonconforming use shall not thereafter be resumed.
- 4. If any nonconforming use of a structure ceases for any reason for a period of more than two years, any subsequent use of such structure shall conform to the regulations specified by this Ordinance for the district in which such structure is located. A lot on which a non-conforming use is discontinued for a period exceeding two years, or is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension of that time period.
- 5. Change of Use. An existing non-conforming use may not be changed to another non-conforming use unless the Planning Board determines that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety according to Special Exceptions criteria Article VII.B.2.b(1)(d) and Chapter 702 Site Plan Regulations Article I.H.

# F. NONCONFORMING LOTS OF RECORD AND USES OF LAND STRUCTURES IN THE VILLAGE AND VILLAGE II ZONES

A nonconforming use of a building, structure, or land for Bulk Fuel Storage in the Village Zone on a conforming or nonconforming lot of records may be extended or enlarged to a maximum of 150% of the original dike footprint containment area to include not more than 200,000 gallons of heating oil and to include not more than 2,000 gallons of propane as of the date of the adoption of this amendment of the Ordinance

