



**Final Decision of Yarmouth Planning Board
Findings of Fact and Conclusions of Law**

Appeal of a Minor Site Plan Approval for an Accessory Dwelling Unit
Chapter 702 Article I.J.13

538 Portland Street, Yarmouth, Maine; Map 30 Lot 14

Eugene and Heidi Miller, Peter and Rhonda Senger, Andrea Pizzo and Haoyi Gu, Appellants
Ed Libby, Applicant

Initial Planning Board Meeting Date: October 27, 2021

Planning Board Meeting Date Following Reconsideration: November 17, 2021

Background

The Planning Board held an initial meeting on October 27, 2021, to consider the appeal of a minor site plan approval for an accessory dwelling unit (ADU) at 538 Portland Street. At that meeting, the Planning Board found that the Appellants did not have standing to bring the appeal. Following a request submitted by the Appellants, the Board voted to reconsider its October 27, 2021, decision. The Planning Board proceeded to find standing and consider the merits of the appeal at the meeting on November 17, 2021.

Motions

On October 27, 2021, the Yarmouth Planning Board found that the appeal was timely filed and the Board has jurisdiction:

The Planning Board finds that the appeal was timely filed.

Such motion moved by Janet Hanson, seconded by Mary Lynn Engel, and voted 6 in favor, zero opposed, Holden absent.

The Planning Board finds that the Board does have jurisdiction.

Such motion moved by Janet Hanson, seconded by Mary Lynn Engel, and voted 6 in favor, zero opposed, Holden absent.

On November 17, 2021, following a motion for reconsideration, the Yarmouth Planning Board found that the appellants do have standing:

The Planning Board finds that the appellants do have standing.

Such motion moved by Wendi Holden, seconded by Mary Lynn Engel, and voted 4 in favor, 2 opposed, King absent.

On November 17, 2021, the Yarmouth Planning Board made the following motion to approve the Minor Site Plan Approval for an ADU at 538 Portland Street:

Given the oral and written testimony received on November 17, 2021, the application for an accessory dwelling unit received on July 12, 2021, and the Planning Department Report dated August 16, 2021, the Planning Board finds that the accessory dwelling unit meets the technical standards of Chapter 702, Site Plan Ordinance, and therefore, the minor site plan approval is granted subject to the following conditions of approval:

1. Due to the property's location along a low pressure sewer system, the applicant shall install a small private sewer pump station. The system must meet Chapter 304 Sewerage Ordinance requirements as well as the Town's technical standards for sewer infrastructure. In addition, a minimum of five feet separation is required from other underground utilities and a sewer connection permit will be required before building permits are issued.
2. Interconnected smoke alarms and carbon monoxide alarms shall be required throughout the ADU in accordance with NFPA 101, NFPA 72 and State Statute.
3. The installation of a fire extinguisher shall be required, which is to be placed in proximity to the ADU's kitchen.
4. During construction erosion and sedimentation control, Best Management Practices (BMPs) shall be installed prior to construction activities and shall be maintained by the contractor until the permanent vegetation is in place. It is also critical that the contractor performing construction inspect, maintain, and repair all ESC BMPs prior to and following rainstorms to ensure the effectiveness of the BMPs. All inspection work must be documented. Maintaining the erosion and sedimentation control measures is a condition of approval.
5. Prior to the issuance of a building permit, the property owner shall file with the registry of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:
 - a. The accessory unit shall not be sold separately.
 - b. The unit is restricted to the approved size.
 - c. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.
 - d. The above declarations are binding upon any successor in ownership of the property.
 - e. The deed restrictions shall lapse upon removal of the accessory unit.
6. Prior to the issuance of an occupancy permit, the property owner shall provide suitable documentation that indicates that either the primary dwelling unit or the accessory dwelling unit is owner occupied.

7. Prior to the issuance of an occupancy permit, the accessory dwelling unit parking area shall be designed to accommodate two 9 feet by 18 feet parking spaces and be constructed so that the parking area and driveway entrance is formalized.
8. The applicant shall maintain the vegetated buffer at the corner of Portland Street and Astilbe Lane such that the accessory dwelling unit is screened.

Standard Conditions of Approval:

1. Develop Site According to Plan: The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel shall require the prior approval of a revised site plan by the Planning Authority.
2. Separate Building Permits Are Required: This approval does not constitute approval of building plans, which must be reviewed and approved by Yarmouth Code Enforcement Officer.
3. Site Plan Expiration: The site plan approval will be deemed to have expired unless work has commenced within one year of the approval or within a time period up to two years from the approval date if approved by Planning Director as applicable. Requests to extend approvals must be received before the one-year expiration date.

Such motion moved by Janet Hanson, seconded by Mary Lynn Engel, and voted 4 in favor, 2 opposed, King absent.

Discussion

The Planning Board's discussion of the minor site plan focused on two aspects of the proposed ADU at 538 Portland Street: the owner occupancy requirement and the order in which the dwelling units exist on the site.

The property at 538 Portland Street is owned by a limited liability corporation (LLC). The majority of the Planning Board believed that it would be appropriate to establish owner occupancy of either the primary dwelling unit or the ADU by providing documentation that a member of the LLC lived in one of the units in addition to providing state or federal identification of the same person and the property address as well as a utility bill in the name of the same person and the property address. The minority of the Planning Board believed that this process does not provide enough safeguards against the property being non-owner-occupied, which is inconsistent with the technical standards for ADUs found in the Site Plan Ordinance.

At 538 Portland Street, as described in the record, the existing structure would be designated as the ADU, while a new structure would be moved to the site and designated as the primary dwelling unit. The Planning Board acknowledged that a building permit has been submitted by

the Applicant seeking approval to move the primary dwelling unit to the site and simultaneously designate the existing structure as the ADU. The majority of the Planning Board believed that although a primary dwelling unit does not exist on the site yet, the minor site plan approval grants permission to develop the site in accordance with the Applicant's proposal, and the building permit process will ensure that the development occurs as proposed, consistent with the ADU technical standards of the Site Plan Ordinance. The minority of the Planning Board believed that the ADU needed to be accessory to a primary dwelling unit, and without a primary dwelling unit existing onsite, there is no ADU.

The minority of the Planning Board also indicated that the two structures are not compatible with each other as required by the ADU technical standards of the Site Plan Ordinance.

The Board is in agreement that this Findings of Fact & Conclusions of Law accurately reflects the votes taken at the October 27 and November 17, 2021, Planning Board Meetings. Voted 7 in favor, zero opposed on December 8, 2021.