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**TOWN OF YARMOUTH**  
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**PLANNING BOARD REPORT**

Chapter 702, Site Plan Review Ordinance Amendment:  
Update Language Regarding Appeals of Minor Site Plan Approvals  
Town of Yarmouth, Applicant

Prepared by: Erin Zwirko, Director of Planning & Development  
Report Date: January 6, 2022; Meeting Date: January 12, 2022

**Introduction**

In November 2021, following the recent appeal of a minor site plan approval, members of the Town Council requested that the Department of Planning & Development update the language around appeals of minor site plan approvals. During the appeal process heard by the Planning Board in late October and through November, the Planning Board initially denied the appellant's standing, but upon reconsideration found standing. Ultimately, the Planning Board determined that the matter was consistent with the Site Plan Ordinance, but the process brought to light some inconsistencies on how other ordinance refer to appeals.

**Background**

The Site Plan Review Ordinance (Chapter 702) creates a two-tier review process for site plan review. Major site plans are reviewed and approved by the Planning Board. Minor site plans are reviewed and approved by the Director of Planning & Development. In the case of minor site plan approvals, the ordinance is clear that an approval from the Director of Planning & Development is appealed to the Planning Board.

There are two instances where appeals of minor site plan approvals are referenced in Chapter 702:

Article 1.D.4

*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.*

Article 1.F.3:

*Appeals of the final action of minor site plans, submitted by the applicant or an abutter, shall be heard by the Planning Board.*

To be clear, this amendment and discussion only focuses on appeals of minor site plan approvals, which is an administrative review and approval. Major site plan approvals from the Planning Board are filed with the Cumberland County Superior Court. State statutes and case law direct the Superior Court procedures.

*"Our Latchstring Always Out"*

## Analysis

The Yarmouth Site Plan Review Ordinance refers to “the applicant or an abutter” as the parties allowed to bring an appeal of a minor site plan approval. The language used in the Site Plan Review Ordinance is unlike any language used in other Town of Yarmouth ordinances as well as in the ordinances of cities and towns in southern Maine. Updating the language to “aggrieved party” is more consistent with other Town ordinances and how other communities define the parties allowed to bring an appeal.

In addition, the proposed amendment takes it another step further. As discussed during the recent appeal, the relationship between who receives a notice and who may appeal is not always the same group of people. Indeed, Planning Board members noted that there are many different definitions of abutter besides an immediately adjacent property. The second element of the proposed amendment makes clear that the relationship between receiving a notice and standing. Those residents or property owners that receive a notice are granted standing to make a case that there is a grievance due to the administrative approval.

The Town’s legal counsel reviewed the proposed amendments and believes that the proposed language is legal. It should be noted that although standing would be automatically granted to those residents and property owners that received a notice, the Planning Board still has discretion to make a determination on the minor site plan approval *de novo*. As with the recent appeal, following reconsideration, the Planning Board granted standing but determined that the proposed project was still consistent with the Site Plan Ordinance and granted approval for the project.

## Recommendation

The Department of Planning & Development recommends that the Planning Board vote to recommend the amendments to the Town Council (strike through are deletions, underline are insertions):

### Article 1.D.4

Appeals: The Director of Planning and Development’s decisions regarding minor site plans are appealable by ~~the applicant or an abutter~~ an aggrieved party 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.

### Article 1.F.3:

Appeals of the final action of minor site plans, submitted by ~~the applicant or an abutter~~ an aggrieved party, shall be heard by the Planning Board. For the purposes of appeals of minor site plans only, any immediate abutter or any resident or property owner who received notification of the minor site plan per Article I.E.1.b will automatically be deemed to have standing or a basis to assert a grievance.

## Proposed Motion

If the Planning Board is inclined to recommend this amendment, the following motion is proposed:

On the basis of the application, plans, reports and other information submitted, and the findings and recommendations contained in Planning Board Report dated January 6, 2022, for a Site Plan Review Ordinance Amendment to update the language regarding appeals of minor site plan approvals, Town of Yarmouth, Applicant, the Planning Board finds that the amendment **[is/is not]** in conformance with the Yarmouth Comprehensive Plan, and therefore **[recommends/does not recommend]** that the Town Council adopt the proposed zoning text amendment.

Such motion moved by \_\_\_\_\_, seconded by \_\_\_\_\_, and voted \_\_\_\_ in favor, \_\_\_\_ opposed, \_\_\_\_\_.

(note members voting in opposition, abstained, recused, or absent, if any).

## Attachment:

1. Amendment Text, dated January 6, 2022
2. Email from Phil Saucier, Bernstein Shur, dated December 7, 2021

#### D. APPROVALS

No person shall commence any development subject to this ARTICLE without obtaining approval under this ARTICLE.

1. Major Development: All projects defined as a major development shall require the approval of the Planning Board as provided by this ARTICLE.
2. Minor Development: Projects defined as a minor development shall require the approval of the Director of Planning and Development or his/her duly authorized agent as provided by this ARTICLE.
3. The Director of Planning and Development may refer to approval of a minor site plan to Planning Board when the nature of the application warrants a public hearing or poses the potential for significant impacts of Municipal facilities or natural resources.
4. Appeals: The Director of Planning and Development's decisions regarding minor site plans are appealable by ~~the applicant or an abutter~~ an aggrieved party 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.

## F. APPLICATION AND REVIEW PROCESS

The following application process shall be followed to facilitate site plan review of proposed major and minor developments, respectively.

1. Review of Site Plans for Major Development
  - a. Upon Receipt of an application for site plan review of a major development, the Director of Planning and Development shall schedule the development for conceptual or final site plan review at the next available Planning Board workshop. The director of Planning and Development may advise the applicant whether conceptual review is appropriate prior to submission of a final site plan; however, the applicant shall determine whether to seek conceptual or final site plan review prior to submitting an application for final site plan review. Neither conceptual nor final site plan review shall occur unless there is evidence that the required public notice has been given and the material required by Section I.G.2 (concept plans) or Section I.G.3 (final plans) is filed with the Director of Planning and Development while determinations as to the completeness of applications for final site plan review shall be made by the Planning Board at a regular or special Planning Board meeting, in conformity with Section I.F1.c.
  - b. Conceptual Review. Conceptual review is intended to provide the applicant with an opportunity to discuss the proposed development and obtain the Board's comments prior to expending significant resources in furtherance of specific development plans. The Planning Board may identify issues that are not to be addressed in the final site plan application. No decision is made during conceptual review.
  - c. Final Site Plan Review. Within 60 days after determining that an application is a complete, final application, the Planning Board shall conduct a public hearing on the proposed major development, unless either the applicant or the board determines that additional workshops are necessary. The Planning Board shall issue a written decision approving, approving with conditions, denying or tabling the final site plan, pursuant to Section I.J. If the Planning Board tables the item, an additional public hearing must be held.
  - d. Statement of Findings. All findings and decisions by the Planning Board or by the Director of Planning and Development denying or conditionally approving any site plan shall be made in writing or reduced to writing within 30 days of the decision and shall state the reason(s) therefore sufficient to appraise the applicant and any interested member of the public of the basis for the decision.
2. Minor Developments: Site Plan applications for minor developments are reviewed by the Town staff for conformance with this ARTICLE. The process begins with the submission of eight (8) copies of the complete application and 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 of the final action of minor site plans, submitted by ~~the applicant or an abutter~~ an aggrieved party, shall be heard by the Planning Board. For the purposes of appeals of minor site plans only, any immediate abutter or any resident or property owner who received notification of the minor site plan per Article I.E.1.b will automatically be deemed to have standing or a basis to assert a grievance.
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 until such time as the comment from the Municipal committee(s) has been submitted.
6. Applications shall not be considered as having pending status and shall be subject to changes in local, state or federal laws until the time they have been deemed to be complete final applications by the Planning Board or the Director of Planning and Development.

## Erin Zwirko

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**From:** Philip Saucier <psaucier@bernsteinshur.com>  
**Sent:** Tuesday, December 7, 2021 8:23 AM  
**To:** Erin Zwirko; Nat Tupper  
**Subject:** RE: Aggrieved party

Hi Erin,

This language works from my perspective- it is straightforward and clear.

-Phil

### Philip Saucier

**Shareholder**

**Municipal & Governmental Services Practice Group Leader**

207 228-7160 direct

207 774-1200 main

207 774-1127 fax

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**From:** Erin Zwirko <EZwirko@yarmouth.me.us>  
**Sent:** Monday, December 6, 2021 5:26 PM  
**To:** Nat Tupper <ntupper@Yarmouth.me.us>; Philip Saucier <psaucier@bernsteinshur.com>  
**Subject:** Aggrieved party

### EXTERNAL EMAIL

Hi Nat,

I spoke with Phil this morning about aggrieved parties, and attached is language proposed after discussing with Phil. There are two sections that talk about appeals of minor site plan.

The recommendation was to refer to an immediate abutter or someone who received notice per the section that describes notices for minor site plan review. Phil also recommended that the second phrase (or someone who could bring a credible particularized injury) would be tricky for the Planning Board. It results in a circular argument, not unlike what occurred when they initially denied standing.

I didn't have the chance to insert this into the ordinance, but I figured with my ankle, I would get this to you sooner rather than later. Copying Phil here too if there are any follow up questions.

Thanks,  
Erin

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