



**Decision of Yarmouth Planning Board
Findings of Fact and Conclusions of Law
Substantial Modification of a Structure Subject to Chapter 701 Article IX
115 Portland Street, Yarmouth, Maine; Map 32 Lot 92
Ronald D. Tustin, Applicant
Planning Board Meeting Date: February 23, 2022**

Background

In 2021, the applicant submitted a proposal to undertake modifications of the structure at 115 Portland Street that are classified as a Substantial Modification per Chapter 701 Article IX, Historic Building Alterations and Demolitions. The applicant specifically desired to undertake façade alterations, including the removal of two existing chimneys, and a building and porch expansion. The proposed modifications at 115 Portland Street triggered review under Chapter 701 Article IX due to the property being located within the Demolition Delay Overlay Zone (DDOZ) and the structure being 75 years or older.

Additionally, in August 2021, the Town adopted a Historic Preservation Advisory Ordinance, Chapter 701 Article X in addition to amendments to Article IX to coordinate the two articles. As part of a historic preservation survey completed to support the development of the Historic Preservation Advisory Ordinance, the structure at 115 Portland Street was identified as a Contributing Structure to the local Lower Village Historic District. Corresponding amendments to Article IX prohibited the demolition¹ of a Contributing Structure to a local historic district unless the approval of a Substantial Modification is granted, one of the specific instances where demolition could proceed.

The Planning Board held two concept level review meetings on March 10 and October 13, 2021. On January 26, 2022, the applicant submitted a request to the Planning Board to approve the overall concept for the structure at 115 Portland including the removal of the chimneys as well as the specific improvements for the Phase 1 project, which included façade alterations of the barn. On February 23, 2022, the Planning Board held a public hearing to act on the overall concept for the structure and the Phase 1 barn project.

Motion

On February 23, 2022, the Yarmouth Planning Board made the following motion to approve the Substantial Modification of the structure at 115 Portland Street:

On the basis of the plans presented by the applicant, the testimony and public hearing, and the findings of Planning Memo dated February 17, 2022 regarding the application of Chapter 701 Article IX, Historic Building Alterations and Demolitions, for the overall concept and the Phase 1 project for the barn at 115 Portland Street, Map 32 Lot 92, Ronald Tustin, Applicant, the Planning Board finds that the building is a Building of Value and that the proposed design retains and respects the significant character defining features of the building, and therefore waives the delay period, and allows that the substantial modifications proceed subject to Town Planning Authority approval and permit issuance of the redevelopment plan, subject to the following conditions:

¹ Per Chapter 701 Article IX: The term "Demolition" is defined as the demolition, razing or tearing down of a Building, or a Substantial Modification to the exterior thereof. As the term is used in this ordinance, an "application for Demolition" may consist of an application for a building permit for a proposed renovation, alteration, or addition to a Building which entails a Substantial Modification to the Building, rather than or in addition to an ordinary application for demolition permit.

1. The barn doors and barn person door shall be a dark stain or paint color.
2. The overhang above the barn person door shall be eliminated.
3. The applicant shall return to the Planning Board for review and approval of the middle section and the main building.

Such motion moved by Andrew Bertocci, seconded by Mary Lynn Engel, and voted 3 in favor, 2 opposed, King and Hansen absent. The motion failed.

Discussion

The Planning Board's discussion of the Substantial Modification focused on two aspects of the proposed request: the overall concept and the Phase 1 project.

At the first concept review meeting, the Planning Board expressed concern with the overall concept and encouraged the applicant to simplify the proposed façade modifications. The sketch plan submitted for the second concept review meeting was simplified. The applicant indicated that for each portion of the building he would work with an architect to refine the building elements and potentially simplify the concept further, which was supported by the Planning Board. The Planning Board supported the building and porch extension through the middle section of the building.

However, throughout the review process, the Planning Board was not in agreement on the removal of the chimneys. The applicant made it clear to the Planning Board that the chimneys are in disrepair and have to be removed. The applicant indicated that although the chimneys do not function for the heating system, there is energy loss through the chimneys, in addition to water intrusion into the building. The applicant worked with a mason to review the condition of the chimneys and the applicant submitted estimates to the Planning Board regarding the costs to repair or remove the chimneys.

At the February 23, 2022 public hearing, the Planning Board discussed the removal of the chimneys in detail. The structure at 115 Portland Street is a Federal style structure. As documented in the Yarmouth Design Manual, Federal style structures feature the following form: typically five bays wide; a symmetrical, rectilinear form, though symmetrical ell additions to a barn were often included; hipped, or later gable roof; and, a large central chimney or paired (occasionally four) chimneys. The motion failed as some Planning Board members believed that the chimneys are a character defining feature of the structure and as such should not be allowed to be removed. The Planning Board members that supported the motion believed that the structure would continue to contribute to the overall character of Yarmouth Village without the chimneys. In addition, a Planning Board member recalled the Board's review of Chapter 701 Article X and the Board's recommendation dated March 12, 2021, specified that future historic review be advisory in nature rather than regulatory.

The Planning Board was in agreement that the Phase 1 barn project was consistent with the character defining features of the building. The Planning Board appreciated receiving the detail architectural drawing that improved upon and refined the overall concept for the barn. The Board incorporated two conditions regarding the color of doors and the elimination of the overhang above the barn person door in order to be more consistent with the overall Federal style of the structure.

The Board is in agreement that this Findings of Fact & Conclusions of Law accurately reflects the votes taken at the February 23, 2022, Planning Board Meeting. Voted ___ in favor, ___ opposed.