



PLANNING DEPARTMENT REPORT

Minor Site Plan for an Accessory Dwelling Unit

53 West Elm Street

Janice Cooper, Applicant

Map 41 Lot 71; Medium Density Residential (MDR) Zoning District

Prepared by: Erin Zwirko, Director of Planning & Development

Report Date: April 4, 2024; Planning Board Date: April 10, 2024

I. Introduction and Project Description

The applicant, Janice Cooper, seeks approval to designate an existing outbuilding as an Accessory Dwelling Unit (ADU) at 53 West Elm Street. The building is an existing accessory structure, built on the site of a former garage, in 1997. It has been improved with electrical service, heating, and plumbing.

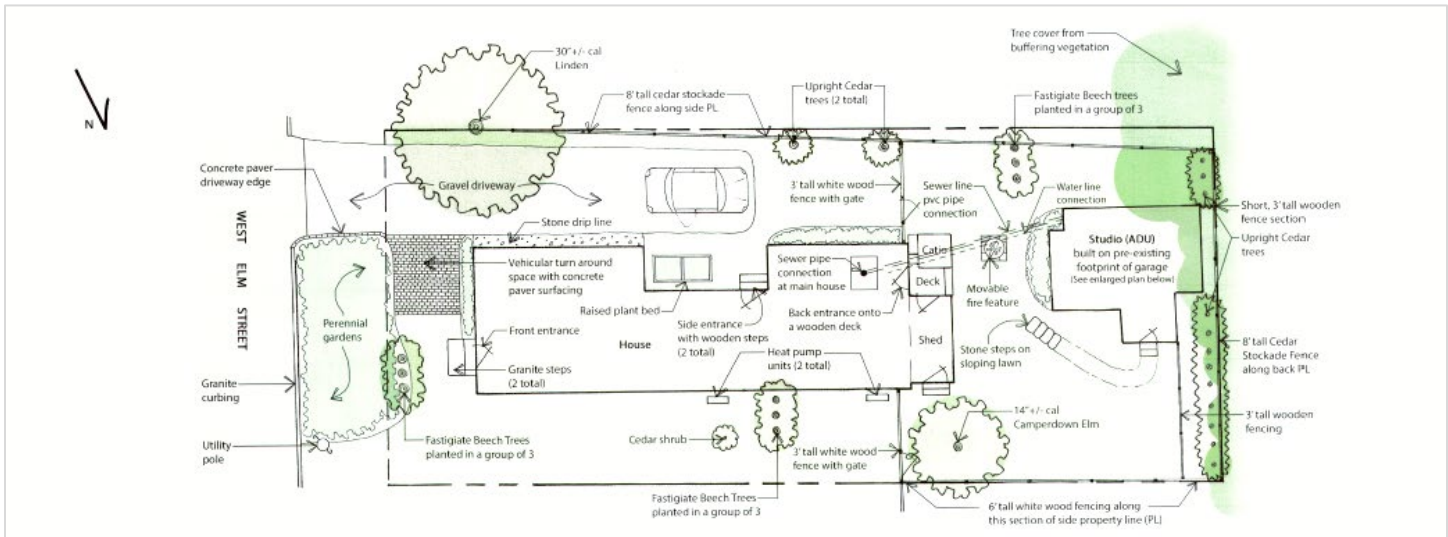
Ms. Cooper applied for an ADU approval per Chapter 702, Site Plan Review, in 2014 and was denied by the then Town Planner on the basis of inadequate parking. The applicant appealed the denial to the Planning Board, which on February 4, 2015, upheld the decision of the Planning Director. In 2018, after more than a year had elapsed from the 2015 denial, Ms. Cooper again applied for an ADU approval. At the time, the then Director of Planning & Development elected to forgo the administrative authority to review this application and referred the matter to the Planning Board for review in a public hearing per Chapter 702, Article I.D.3. The Planning Board denied the application on the basis of inadequate parking.

Since 2020, the applicant has used the outbuilding as a habitable outbuilding that may be used as a sleeping room with bathroom and work-sink accessory to the existing single-family home. This is documented in a zoning determination from the previous Director, upheld by the General Board of Appeals, and as documented in a Certificate of Occupancy dated September 24, 2020, issued by Code Enforcement Officer Nicholas Ciarimboli.

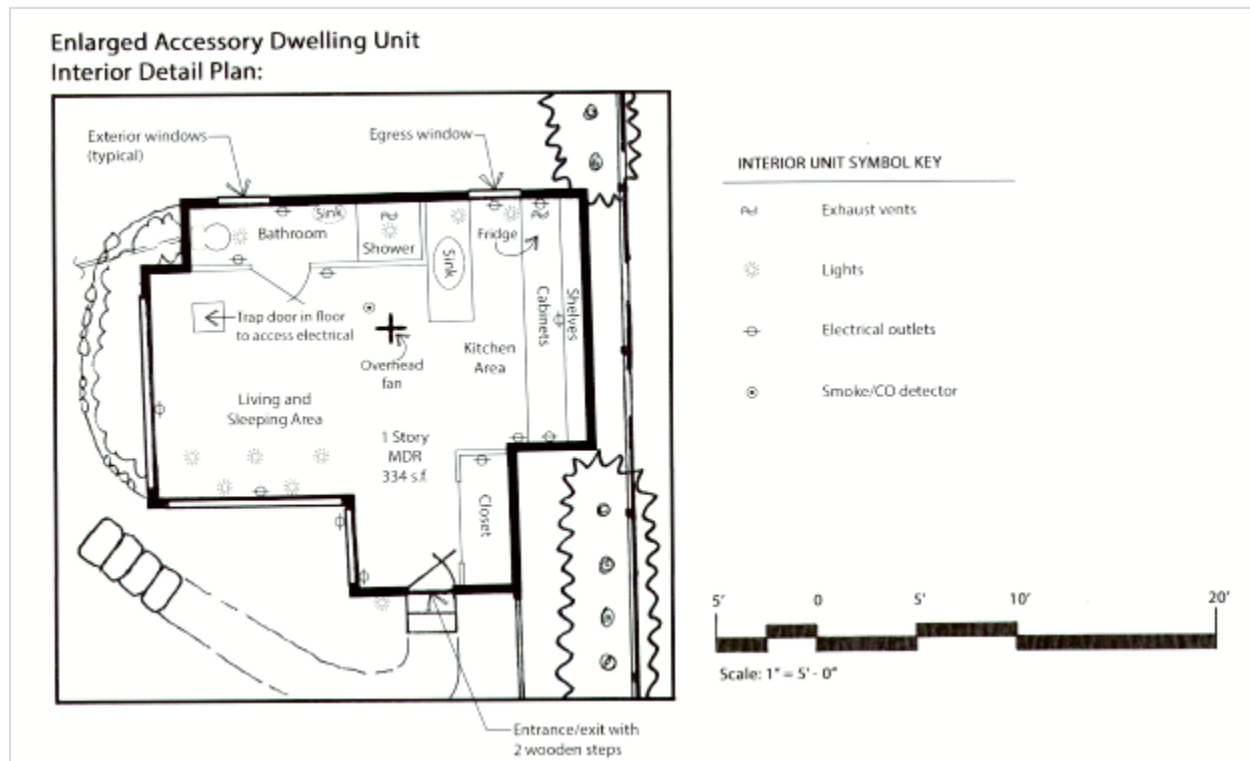
At this time, Ms. Cooper comes forward again with a request to designate the outbuilding as an ADU because the regulatory landscape has changed. In 2022, *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, known as LD 2003, was signed into law for implementation of the new mandated zoning provisions. Related to the matter in front of the Planning Board, LD 2003 mandated that ADUs be allowed wherever single-family dwelling units are permitted in any given municipality. In addition, the law mandated that municipalities cannot require any additional parking for an ADU beyond what is required for the single-family home. On October 19, 2023, the Town Council adopted zoning amendments to implement the requirements of LD 2003 including eliminating the requirement for additional parking for an ADU.

As parking was the basis of the previous denials, Ms. Cooper requests review anew. As Director of Planning & Development, I have referred the matter to the Planning Board for consideration due to the history of this specific request at this property.

The applicant has provided a site plan for the subject property as well as a floor plan for the existing outbuilding:



Excerpt of Site Plan Prepared by Michelle Grover Landscape Design



Floor Plan of Proposed ADU

The following photographs were taken in April 2024 of the subject property:



53 West Elm Street in context with the neighboring properties; the proposed ADU can be seen behind the residence



53 West Elm Street with the proposed ADU to the rear

II. Project Data

| SUBJECT | DATA |
|-------------------------|--|
| Requested Review | Minor Site Plan for an Accessory Dwelling Unit (ADU) |
| Existing Zoning | Medium Density Residential |
| Existing Use | Single-family home with outbuilding |
| Proposed Use | Single-family home with ADU |
| Parcel Size | 0.13 acres |

Uses in Vicinity: The surrounding neighborhood consists of single-family homes originating from varying time periods, some single-family homes with accessory dwelling units, and multi-unit apartment buildings.

III. Public Comment

Notices of this public hearing were sent to 77 property owners in the vicinity (within 500 feet) of the proposed development. At the time of writing, we have received one letter in support of the proposed request.

IV. Site Plan Review Standards for an Accessory Dwelling Unit (Chapter 702, Article I.J.13)

The site plan review standards for an ADU are found in Town of Yarmouth Ordinances Chapter 702, Site Plan Review, Article I.J.13. The standards are reprinted below for convenience in the review. This section was most recently amended by the Town Council on October 19, 2023, with an effective date of January 1, 2024, as described in the introduction.

13. Accessory Dwelling Unit: any request shall include a plot/site plan showing the following:

- a. *Lot boundaries and dimensions at scale.*
- b. *Zoning district.*
- c. *Date of plan.*
- d. *Property owner with deed reference.*
- e. *Lot area.*
- f. *Location and setback of all buildings.*
- g. *Date of construction of single-family dwelling.*
- h. *Separate floor layout of all finished levels.*
- i. *All plumbing facilities, kind and location.*
- j. *Use of all rooms.*
- k. *All entrances/exits.*
- l. *All partitions, temporary or permanent.*
- m. *Location and type of all appliances.*
- n. *Rights of way, public and private*
- o. *All easements*
- p. *Street names*
- q. *Sewerage facilities*
- r. *Off-street parking spaces*

Town Comments: The applicant provided an Existing Conditions Plan, prepared by Michelle Grover Landscape Design and dated February 26, 2024, that incorporates the major features of the subject property and the proposed ADU. The plan is to scale, so additional dimensional details may be easily identified.

In permitting an ADU, the Planning Director and/or CEO shall find that:

- a. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.*

Applicant Comments: See exterior photographs of proposed ADU and house Ex. C page 18-20. The proposed ADU was pre-existing at time of owner's purchase. The design is believed to have been created by the same firm that designed the two-storey addition to the house and remodeled the house c. 1997. It uses the same building forms, construction materials (wood), color (white). The height of the ADU is lower than second storey of the house (See Exhibit C, page 26. The landscaping is consistent with the house (the same type of three slender trees planted in front and the side of house, and to the left of the ADU). See Site plan, Ex. P. Other landscaping (flowers and shrubs) which I added is consistent with the neighborhood style. The wildflower garden in the front yard was added to help shield the view of any car parked in the parallel spot. Moreover, the small front wildflower field is environmentally beneficial for pollination.

Town Comments: The structure proposed to be designated as an ADU is a single-story structure located behind the existing single-family structure. The two structures are consistent in building form, height, materials, and color. No changes are proposed to either structure.

- b. The exterior design is in harmony with and maintains the scale of the neighborhood.*

Applicant Comments: See Exhibit C, pages 18-20. Many passers-by have complimented me on the beauty of the structure. The height of the proposed ADU is lower than the second floor of the primary house and neighboring houses. It is sited in the left rear yard of the plot, and faces only the back yards of neighbors. Given its small size and distance from the street, the sight of the ADU is not dominant to public viewers.

Town Comments: Although lawfully nonconforming to the rear setback, the building is in harmony with the neighborhood.

- c. The accessory unit does not result in excessive noise, traffic or parking congestion.*

Applicant Comments: The present owner lives alone and has never had more than one car in the ten years she has owned the premises. The ADU is a studio and is expected to be rented to one person, thus accounting for two vehicles at most times. No parking is allowed on either side of West Elm St., a limitation enacted sometime after the neighborhood was formed. No sidewalk is present on my house's side. Most homes in this area of West Elm St. have narrow driveways, accommodating one or two vehicles along side each other, and many owners park in tandem and often on the lawns. (See photographs, Exhibit E, pages 28-34) In the ten years that the applicant has lived at this location, I have observed that most vehicles are pulled forward into driveways and backed out into the street to depart. When parked in tandem, vehicle owners may have to back out to allow forward car to depart: this practice includes the opponent to this application. Indeed, this is the norm for this neighborhood. Indeed, permitting an ADU to replace Airbnb use will likely reduce traffic congestion in the summer.

Town Comments: As noted in the introduction, the previous applications to designate the outbuilding as an ADU were denied on the basis of a lack of parking. In the years since the denials, the regulatory landscape has changed. Municipalities are no longer allowed to require additional parking for an ADU in addition to the required parking for a single-family home per the state law known as LD 2003. The Yarmouth Town Council adopted amendments in October 2023 to comply with the state mandate.

In Yarmouth, a single-family home requires two parking spaces. The existing gravel driveway serving the residence on the property is approximately 53 feet in length and the width varies from approximately 14 feet at the property line to about 11 feet at the extent of the gravel drive. A parking space is deemed to be 9 feet by 18 feet, so the driveway can support the two required parking spaces for the existing residence.

The previous denials also discussed circulation and congestion. The applicant notes that many residences on West Elm Street have a tandem parking condition. Indeed, tandem parking is a condition in much of Yarmouth Village and is consistent with the surrounding context. In reviewing the record (the minutes from the Planning Board's 2018 denial are attached), the discussion around congestion was accommodating the third parking space required for the ADU on the property and how that might require maneuvering of vehicles as three vehicles cannot fit in a tandem fashion.

At this time, without the need to provide a third parking space, the previous concern about maneuvering and congestion appears to be mitigated.

- d. *The primary residence and the ADU shall connect to public water and public sewer in compliance with all applicable Town of Yarmouth and Yarmouth Water District requirements and ordinances as well as the Maine Subsurface Wastewater Disposal rules. If the primary residence and the ADU cannot connect to public water and/or public sewer, the applicant shall demonstrate by competent third-party evidence that the supply of potable water and/or septic capacity is sufficient for the primary residence and ADU. Approval of an ADU shall be conditional on any required improvements.*

Applicant Comments: Yarmouth Town service. Sewer line runs from house to ADU through PVC pipes. In house basement/bunker, PVC pipes are connected to cast iron. See Site plan, Ex. P. See also Sewer inspection report, Exhibit I, page 44 and letter from Town Engineer, Steven Johnson, Ex. J, page 45-47, stating that said sewer inspection is acceptable in lieu of sewer permits.

Town Comments: The structure is currently served by public water and public sewer. There is no proposed change. The Yarmouth Town Engineer, Steve Johnson, reviewed a video of the ADU sewer service and the existing home service, and both appeared to be in satisfactory condition although the line serving the primary residence has substantial root growth in the clay pipe joints. Mr. Johnson recommends that the service be cleaned via hydraulic jetting and the roots removed to minimize the risk of a sewer backup. This is recommended as a condition of approval.

- e. *Major access stairs, deck entry doors, and major windows will generally be limited to the walls facing the primary residence. Windows that impact the privacy of the neighboring side or rear yard shall be minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.*

Applicant Comments: The ADU entry door faces the back yard of 47 West Elm St. The owners of that property have no objection to this placement, which faces their lawn, and have submitted a statement to that effect. (See Exhibit K, page 48) All ADU windows are shielded from viewers by curtains and to, the rear and left, also by evergreen trees and maple trees.

Town Comments: The structure to be designated as an ADU meets these requirements. Attached to this staff report is a letter from the owner of 47 West Elm Street.

- f. *The orientation and location of the buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including heritage or significant trees and shrubs to the extent feasible and minimize alteration of natural land forms.*

Applicant Comments: No trees or shrubs were removed by applicant. The left side and rear of the ADU are heavily wooded. Flower beds have been added along the picket fence adjacent to 47 West Elm, which further increases privacy. The sight by the public of the ADU from West Elm St. and other viewpoints is very pleasant and in keeping with the historic nature of the area. The land forms of the back yard, which rises about two feet, have not been changed. Despite this elevation rise, the height of the proposed ADU is lower than the second storey of the house and neighboring houses.

Town Comments: There will be no change to the orientation of the building or trees on the property.

g. Building profiles, location and orientation relate to natural land forms.

Applicant Comments: The ADU profile, location and orientation relate to the natural land form, which naturally rises a few feet from the base of the house to the site of the ADU.

Town Comments: There will be no change of any natural land forms.

h. A single-family dwelling exists on the lot or will be constructed in conjunction with the ADU. Only one ADU is permitted per lot.

Applicant Comments: A single family house exists on the lot. Only one ADU is sought, which has been pre-existing since c. 1997.

Town Comments: The project site meets these requirements.

i. ADUs are not eligible for variances to setbacks.

Applicant Comments: No setback variance is sought.

Town Comments: The structure to be designated as the ADU exists on the property. The structure is lawfully nonconforming and received the required permits when constructed.

j. Before obtaining a building permit for an ADU 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 above declarations are binding upon any successor in ownership of the property;*
- d. The deed restrictions shall lapse upon removal of the accessory unit.*

Applicant Comments: The appropriate document will be filed by the owner with the registry of deeds declaring various restrictions concerning the ADU.

Town Comments: A deed restriction shall be filed in the Cumberland County Registry of Deeds to meet the requirements of this standard. This requirement is recommended as a condition of approval.

k. ADUs shall be at least the minimum size adopted by the Technical Building Code and Standards Board pursuant to 10 M.R.S. §9722 and shall not exceed 900 square feet. If an ADU occupies a portion of an existing Structure either on a single floor or on multiple floors, or an existing detached Structure will be converted to an ADU, the Planning Department may allow for an increase in the allowed size of the ADU up to 1,215 square feet in order to efficiently use all of the floor area, so long as all other standards of this section are met.

Applicant Comments: The ADU is at least the minimum size required by law and does not exceed 900 square feet. It is not connected to nor does it occupy any portion of an existing house.

Town Comments: The proposed ADU has a living area of 334 square feet.

- l. Approval of an ADU shall be conditional on obtaining applicable building, plumbing, electrical and any other necessary municipal permits.*

Applicant Comments: Applicable building, plumbing, electrical and other permits have been obtained and attached, if found in the town file. See Exhibit M, pages 56-71, and Certificate of Occupancy/Use, Exhibit D, page 27.

Town Comments: Obtaining all other permits is recommended as a condition of approval.

- m. The Fire Chief must review and sign off on the application.*

Applicant Comments: To be done concurrent with ADU review.

Town Comments: The Fire Chief reviewed the application and verbally relayed that the conversion would not require a sprinkler system and that he had no concerns. The Chief will participate in the Code Enforcement inspection for a new Certificate of Occupancy if the ADU approved.

- n. Unless part of the design of an existing single family dwelling, the dwelling(s) shall have only one (1) front entrance and all other entrances shall be on the side or in the rear of the dwelling. A front entrance leading to a foyer with entrances leading from the foyer to the two (2) dwelling units is permitted. Outside stairways (either open or enclosed), that service an ADU on upper stories are not permitted.*

Applicant Comments: See Exhibit K, page 48 waiver by adjacent neighbor.

Town Comments: The project site meets these requirements.

- o. For an ADU located within an existing garage or other outbuilding, the structure is not required to approximate the exterior features of the existing single family dwelling, but any exterior modifications should be consistent with the architectural style of that structure unless the building is upgraded per the requirement of new structures or unless the new structure is designed in a traditional New England form such as a barn.*

Applicant Comments: Not applicable.

Town Comments: The ADU is in an outbuilding. The proposed structure to be designated the ADU is consistent with the building form, height, materials, and color of the single-family residence.

- p. An existing single-family dwelling that is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements may be expanded to incorporate an ADU subject to the requirements of Chapter 701 of the Yarmouth Code Article III for the expansion of other non-conforming single family dwellings.*

Applicant Comments: Not applicable.

Town Comments: The lot is non-conforming but is eligible to have an ADU.

- q. *ADUs may be permitted on back lots.*

Applicant Comments: Not applicable.

Town Comments: The property is not a back lot. This standard is not applicable.

- r. *ADUs are not permitted on a lot with a non-conforming use, unless that nonconforming use is a single-family dwelling, in which case the ADU shall be allowed.*

Applicant Comments: Not applicable.

Town Comments: The existing single-family use is a conforming use within the medium density residential (MDR) district.

- s. *ADUs are not permitted on a lot with mixed uses.*

Applicant Comments: Not applicable.

Town Comments: The lot does not have mixed uses. This standard is not applicable.

- t. *When an owner wishes to eliminate the ADU, proof of the removal of the second kitchen and the restoration of the apartment to its status before the conversion shall be submitted to the satisfaction of the Planning Department. The owner shall record a Release of the Declaration of Restrictions on the Land after inspection and confirmation by the Code Enforcement Officer.*

Applicant Comments: Not applicable.

Town Comments: This standard is recommended as a condition of approval.

- u. *ADUs are not permitted on lots where the number of dwelling units allowed on a lot has been increased under Chapter 701, Article II.EE, after January 1, 2024.*

Applicant Comments: Not applicable.

Town Comments: This standard is recommended as a condition of approval.

- v. *ADUs must comply with all of the standards of Chapter 701, Article IV.R.*

Applicant Comments: Not applicable.

Town Comments: The project site is not located in the Shoreland Overlay District.

V. Recommendation

The Planning Board is presented with a request to approve an ADU at 53 West Elm Street. As noted in this staff report, there are prior denials of an ADU, although in 2024, the regulatory landscape has changed. The Planning Board will need to consider whether the basis for the previous denials is no longer a concern based on the record, the applicant's presentation, and any testimony received at the public hearing. If the Planning Board is satisfied that they have received the information necessary to make a determination on the ADU, the following motion is recommended:

On the basis of the application, plans, reports and other information submitted by the applicant, information from the public hearing, information and the findings and recommendations contained in Planning Board Report dated April 4, 2024 for an approval of an Accessory Dwelling Unit, Janice Cooper, Applicant; 53 West

Elm Street, Map 41 Lot 71, regarding the applicable regulations and standards of Chapter 702, Site Plan Review, the Planning Board hereby finds and concludes that the Accessory Dwelling Unit [**meets/does not meet**] the required standards and is therefore [**approved/not approved**] subject to the following conditions of approval:

1. The property owner shall file with the Cumberland County Registry of Deeds the Declaration of Restrictions as outlined in Town of Yarmouth Ordinances Chapter 702 Article I.J.13.j. Evidence that the Declaration of Restrictions has been recorded in the Registry of Deeds shall be submitted to the Town. An example of the Declaration of Restrictions may be obtained from the Department of Planning & Development.
2. Prior to the issuance of a Certificate of Occupancy for the ADU, the applicant shall have the sewer service cleaned via hydraulic jetting and the roots removed to minimize the risk of a sewer backup. Evidence of such service shall be provided to the Code Enforcement Officer.
3. Any density increase that may be permitted under Chapter 701, Article II.DD and Article II.EE are prohibited as long as the ADU is in existence.
4. Should the ADU be discontinued, proof of the removal of the second kitchen and the restoration of the apartment to its status before the conversion shall be submitted to the satisfaction of the Planning Department. The property owner shall record a Release of the Declaration of Restrictions on the Land after inspection and confirmation by the Code Enforcement Officer.

Standard Conditions of Approval: Please note the following standard conditions of approval and requirements for all approved site plans:

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.
4. **Appeals:** The Director of Planning and Development's decisions regarding minor site plans are appealable by 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.

Attachments:

1. Planning Board minutes, January 24, 2018
2. Memo from Steve Johnson, Town Engineer, dated 3/19/2024
3. No Comments from Erik Street, DPW Director, dated 3/25/2024
4. No Comments from Parks and Lands Committee, dated 3/29/2024
5. Public Comment – Camilla Shannon, dated 4/1/2024

YARMOUTH PLANNING BOARD MINUTES

REGULAR MEETING

January 24, 2018

I. CALL TO ORDER

Tom Federle called the meeting to order at 7:05 PM.

II. ROLL CALL OF MEMBERS

PRESENT

ABSENT

| | | |
|-------------------------------|---|---|
| Tom Federle, Chair | X | |
| Judy Colby George, Vice Chair | X | |
| Andrew Bertocci | X | |
| Daniel Martinez | X | |
| Matt Schumacher | | X |
| Andrew Schaefer | X | |
| Michael Dubois | X | |

OTHERS

Alex Jaegerman, Director of Planning & Development

Wendy L. Simmons, Administrative Assistant, Recording Secretary

III. APPROVAL OF MINUTES

None

IV. COMMUNICATION

None

V. PUBLIC HEARING ITEMS

None

A. OLD BUSINESS:

None

B. NEW BUSINESS:

1. **Request for Contract Zone Amendment to Allow up to 12 Townhouse Condominium Development; Vicinity of 153 & 149 Main Street; Village 1 Zone; Matt Wogan, Waypoint Partners, LLC, Applicant**

Matt Wogan, of Waypoint Partners, LLC, is proposing development of 149 & 153 Main Street in Yarmouth, Maine, also known as the Shepley & Weld houses on the NYA campus. Pursuant to the Town of Yarmouth Contract Zoning Ordinance, Chapter 701, Article IV.V, Waypoint Partners, LLC is proposing the development of up to 12 Village Townhomes, which will require a contract zoning authorization from the Town of Yarmouth. The development will redevelop the two existing houses into four townhouses each, plus the addition of a rear connecting building that will house four additional units, creating a courtyard between the two existing buildings. 25 parking spaces are proposed.

Matt Wogan, applicant gave an overview of the project. They are proposing 12 Town Houses in the Shepley and Weld buildings and the addition of a third building in the back which will frame in a courtyard between the buildings. They are pursuing a contract zone because CD4 has not passed and this kind of project is not allowed in the Village zone. The target market will be diverse, new home buyers, empty-nesters and the elderly; basically, anyone who wants to live in a walkable Village setting.

Sarah Witte, Landscape Architect gave an overview of the site plan. This project supports the Comprehensive Plan of having more housing along Main St. in the Village area. They do not anticipate much work to be done in the courtyard area and plan on keeping all the existing trees. They will utilize existing parking on the side of the building and add some more spaces. There will be fencing/screening in the back of the property 3'-6' high to buffer the cars from the existing building in the back of the property. Snow storage is still being worked out. They are considering expanding Vespa Lane to allow for a pedestrian path to Main St. The crosswalk currently leading into the existing parking lot will be relocated down the street. They would consider an entrance onto Bridge Street if it is approved by NYA to build a road on the back of their property. A traffic study will also be conducted.

Joe Waltman, Architectural Designer gave an overview of the buildings. The units will be approximately 1300 sf of living space and 2-3 bedrooms. They will be 2 floors and the layout of each unit will be dictated by the property lines. They will be restoring old architectural elements of the existing houses and building the new building with the same historic look and height.

Michael Dubois has concerns about the proposed parking behind the building. The spaces are very tight and would be impossible to get into and out of. SW – They are considering those spaces and they may be lost to a dumpster.

Chair Federle opened to public comment

Ann Reed – 31 Bowdoin St.

Wants to know who is responsible for outdoor maintenance. MW – A condo association would be set up to handle everything outside. Inside the units are the responsibility of the owners.

Ben Jackson – Head of NYA

In full support of this project. It is in keeping with the neighborhood environment.

Matt Cardente, Realtor and Abutter, 43 Bridge St.

In full support of the project. The development would be low impact on the neighborhood compared to other potential uses such as retail. A connection to

Bridge street was not considered because of existing concern from Bridge St. neighbors about the impact of traffic from Patriot Insurance.

John Sedgwick – 109 Main St.

Doesn't think the diagram is correct. Concerned about the proximity of the building on the other side of Vespa Lane. Concerned about the size of the existing parking lot; it is small and will not hold the amount of cars on the applicant's drawing. Does not like the addition of the third building in the back; thinks it changes the neighborhood. Concerned about the crosswalk going into the parking lot. SW – Crosswalk will be relocated.

Public comments closed

Tom Federle – Would like to conduct a site walk. Excited about the project. A great location and happy to see the old buildings will be restored. Asked if it was viable to do the project with only 2 buildings? MW – the third building makes it more financially viable and it helps frame out the courtyard.

Daniel Martinez questioned if this project may trigger the new demo delay ordinance?

Andrew Schaefer – likes the proposal and adding additional residential space. Only concern is additional light and noise being more intrusive. MW – Has same concerns and lighting will be subtle as will signage.

Judy Colby-George – if the Character Based Development Code passes these are the kinds of projects that would be permissible without a contract zone. Thinks the back building adds character to the space.

2. Request for Contract Zone Amendment to Allow a Single Family Home with Daycare Facility for 29 Children in the MDR Zone; Vicinity of 163 West Main Street; Angela Garrison, Applicant.

Angela Garrison is requesting a Contract Zone to allow a single-family home with a daycare facility for 29 children in the MDR zone. The MDR zone allows as a special exception a group day care for up to 12 children in a single-family home, or a day care facility for more than 12 children within a church or municipal building. The applicant hopes to open an Early Learning Childcare Center with Before and After School Care for local children. The upper level of the existing building would become the Owner's primary residence, consisting of 3 bedrooms and 2 baths. The property is a 1.22 Acre parcel in the MDR (Medium Density Residential) Zone which includes a 3,525 SF Single Family residence (6 Bedrooms), a small parking area with a paved driveway, and a 2,122 SF barn. Parking for 9 vehicles is proposed.

Angela Garrison, applicant gave an overview of the project. She started Beansprouts in Freeport because she was looking for good quality childcare for

her children including education and healthy lifestyle. They opened with 7 kids which quickly grew to 20 and then reaching their max of 49. They currently have a 2 year waitlist. They cook all food on site from local vendors. They offer individual learning plans written for each child's needs and are an ecofriendly environment using all natural cleaning solutions. She is a Yarmouth resident and sees a need for these services in the Yarmouth. This location would be her family's primary residence on the 2nd floor with the childcare area on the first floor. She is proposing before and after care for K-12 and a pre-k program. There would be a maximum of 29 children, which is based on State regulations of 35sf/child. Before care is proposed to be 6:30/7:00 AM to bus pick up (about 8:15 am). Pre-K from 9AM-3PM with a maximum of 10 kids. Aftercare care from 3:30-5:30/6:00PM. No vacation camp would be offered. She would do a small summer camp program; not 29 kids. The programs are staggered and there would not be 29 children there all day. She is requesting a contract zone because in MDR home day cares are allowed with a limited number of children. To have a day care of this size requires it be in a church or civic building. All existing locations in Yarmouth are not ideal for her program.

David Matero, Architect gave an overview of the site plan. There would be changes to the parking lot to accommodate 9 cars based on Town calculations; including 2 spots for the owners. They would widen the driveway to allow two way traffic and add a crosswalk to the other side of West Main St. The therapy horse is being withdrawn from the application.

Tom Federle opened to public comment

No public comments

Public comments closed

Alex Jaegerman noted a letter of opposition from a neighbor concerned about increased noise, traffic and housing values.

Daniel Martinez suggested moving the parking lot to the other side of the property. D. Matero – It was considered; but if they move the parking lot it would switch the playground to the other side.

Andrew Schaefer suggested a circular drive to help with the flow of traffic. D. Matero – the engineer is exploring this option.

Michael Dubois – does not see how this use is in line with the Comprehensive Plan and thinks it's a big jump for what MDR allows. He requested an hour by hour breakdown of traffic and number of children. AG – A traffic study is being done; but initial findings show minimal impact. MD – also questioned if this is a real need in the area. AG – Was unable to even get on a waitlist for aftercare through Community Services.

AS – The house does not support this use in the MDR zone. The applicant is purchasing the property and requesting to use it in a different capacity. He's concerned about setting precedent and people constantly coming to the board and asking for exceptions.

JCG agrees the property seems well suited; but concerned about future properties not well suited to projects. If they approve the application the Board needs to give solid reasons why it was approved.

DM – Seeing many more contract zones coming to the Board looking for exceptions.

TF – thinks the property lends itself to this kind of use. Concerned about the impact on the neighbors. He recommends natural sound buffers with neighboring properties. Requested she talk to the neighbors directly and get their buy in. AG – she did speak with neighbors and nobody expressed concerns to her directly.

3. Minor Site Plan Application Accessory Dwelling Unit; Vicinity of 53 West Elm Street; Map 41 Lot 71, Janice Cooper, Applicant.

The applicant is proposing conversion of an exterior building into an accessory dwelling unit. This item has been referred to the Planning Board for review by the Director of Planning & Development

AJ – Referred this to the Board due to its history. An ADU was previously denied in 2015 by the Planner and the Planning Board.

Janice Cooper, applicant gave an overview of the application. There is an existing building behind her primary residence she would like to convert into an ADU and rent to a long term tenant. It is currently used as an art studio/office/storage unit. Her income options are limited and she currently rents her home through Airbnb in the summers to help meet expenses. When she bought the house she anticipated converting it to an ADU for rental purposes. Yarmouth is short on affordable housing and this would be small and affordable. She is requesting a variance for parking from 3 spaces to 2. The driveway is long enough to accommodate tandem parking for up to 3 cars. She is currently parking in front of the house in the patio/parking space she created as a third space. There are a couple other houses in the neighborhood who have created similar parking spots in front of their homes. If the ADU were approved she would stop renting through Airbnb after the 2019 rental season and secure a long-term tenant.

TF – It appears the current primary concerns are the use of the main house as a short term rental. If the ADU were approved and it were rented as a long term rental would she need 3 spaces? JC – No she could make it work with 2 spaces in

the driveway, parking in tandem. She would rather have a long term tenant in the ADU.

MD – not inclined to approve the waiver for parking. Concerned about it transferring to the next owner. The third space appears to be a problem in the winter months and not very usable.

Camilla Shannon – 47 W. Elm St.

She is supportive of the application. Janice has been a good neighbor and friend. She is supportive of options allowing people to live in the Village. Janice uses their driveway on occasion with permission and has no problem with it.

Bud Stiker – 52 W. Elm St.

The car parked in front of the house is not in harmony with the neighborhood. Flowers are seasonal and do not hide the car and neither does the snow. He is a 3 car family and parks on Center St. when they need additional space. There are other options for parking in the neighborhood.

Carla Hunt – 3 Church St.

She is supportive of the application. Janice has parked on Church St. when she needs to, and it has never been a problem.

Carrie Yardley – 36 W. Elm St.

She is not in support of the ADU. The applicant is not legally entitled to bring this application back to the Board. If the applicant did not agree with the decision previously she should have appealed at that time. She is not entitled to have an ADU on her property. Parking is an issue; the driveway is too narrow, and the front yard/patio is not working. It's either a parking space or a patio and cannot be both. Neither the flowers or the snow hides the car. The waiver should not be granted. It is speculation that a long term renter will only have one car. Concerned about a waiver carrying over to future owners who may have multiple cars. She believes Airbnb is an unpermitted hospitality use.

Rebecca Rundquist – 55 W. Elm St.

She is not in support of the ADU. The applicant did not do her due diligence when buying the property to ensure the second building could be converted to an ADU. There are no permits on file for any of the work already done to the building; it is not up to code. Concerned about the transient nature of Airbnb regarding safety, traffic and noise.

Public comments closed

Andrew Bertocci was on the Planning Board the last time this application was presented. He doesn't see any difference between the previous application and this one.

TF – If the ADU is denied the current short term rental through Airbnb will continue. Airbnb is not currently regulated in Yarmouth and not under consideration with the Town Council yet.

AS – Inclined to follow the previous outcome; he hasn't seen any changes in the application.

JCG – It's not the Planning Board's job to deal with the personalities involved; only to decide about granting the waiver regarding parking and the ADU. There are not 3 legitimate spaces currently on the property.

TF – Doesn't think parking in the front yard is in harmony with the neighborhood. Does it meet the criteria of an ADU? AJ – It does meet the criteria; parking is the only area that came up several times in the report. Can the Board see granting the waiver?

MD – Tandem parking with up to 3 cars would be a challenge logistically in shuffling cars around.

Michael Dubois made the following motion:

On the basis of the application, plans, reports and other information submitted by the applicant, information from the public hearing, information and the findings and recommendations contained in Planning Board Report dated January 18, 2018, for Accessory Dwelling Unit, 53 West Elm Street, Janice Cooper, Applicant Map 41, Lot 71, the Planning Board finds that the plan **is not** in conformance with Chapter 702, Site Plan Review Ordinance, Article 1.J.13, Accessory Dwelling Unit and denies the application.

seconded by Andrew Bertocci, and voted 5 in favor, 1 opposed, (Martinez), Matt Schumacher absent.

Michael Dubois made the motion to suspend the Planning Board rule of not taking up any new business after 10:00 PM. Seconded by Andrew Schaefer and voted 6 in favor, 0 opposed, Matt Schumacher absent.

4. Shoreland Zone Review – Chapter 701, Zoning, Article IV.R.5.1; Vicinity of 61 Benjamin's Way; Map 53 Lot 15, Martin Meier applicant.

The applicant is proposing the expansion of a non-conforming residence in the Resource Protection District and Shoreland Overlay District. If the expansion and rehabilitation removes more than 50% of the value of the existing nonconforming structure, a relocation assessment is required. The applicant states that the removed structure is less than 50% of the value.

Martin Meier, Representative for the applicant gave an overview of the project. The applicant is proposing an expansion to the existing home. They are removing

roughly 20% of the value of the existing structure which is well below the threshold of 50%. The application meets all the criteria for approval.

AS – In favor of the application. He like the proportions, the plan responds to the needs of the environment in consideration of the minimal viable alternatives. Asked if there was any feedback from the neighbors. Dan O'Halloran, applicant – owns the property on one side, Wyman Station on the other and the third side is owned by an out of state seasonal resident.

Andrew Bertocci made the following motion:

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report dated January 18, 2018 relevant to O'Halloran Residence Shoreland Zone Review, 61 Benjamin's Way, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

- A. Regarding Chapter 701 Article IV, Section R.5.a(1)(c)(i)and (4), Expansion, and Reconstruction or Replacement**, that the plan **is** in keeping with the maximum allowable expansion of footprint as established in Article IV.R.5.a(1)(c)(i) and that the market valuation of the removed structure as presented **is** less than 50% of the market value of the structure in accordance with Article IV.R.a(4), and **is** approved as presented.

seconded by Daniel Martinez, and voted 6 in favor, 0 opposed, Matt Schumacher absent.

Andrew Bertocci made the following motion:

- B. Regarding Shoreland Permit Review Chapter 701 Article IV.R.11 a & b**, that the plan **is** in conformance with the standards for review of this section, and **is** approved subject to the following condition of approval:
 - 1. A letter of no impact is provided by the Maine Historic Preservation Commission on behalf of the applicant.

seconded by Daniel Martinez, and voted 6 in favor, 0 opposed, Matt Schumacher absent.

Chair Federle requested the Planning Department add wording to future agenda's stating the order of agenda items may be changed.

He also expressed that all Board Members should vote on all applications. They could not hear the application and then abstain from voting. They would have to abstain prior to hearing the application.

VI. ADJOURNMENT

With no objection, the meeting adjourned at 10:55 PM

Respectfully submitted:

Wendy L. Simmons, Administrative Assistant, Recording Secretary



Attachment 2

TOWN OF YARMOUTH
INTERNAL MEMORANDUM

TO: Nicholas Ciarimboli, Code Enforcement Officer
FROM: Steven S. Johnson, P.E., Town Engineer
DATE: March 19, 2024
RE: ADU Application 53 West Elm Street

Nick:

I have reviewed the subject application package submitted by Janice Cooper, the property owner, for an existing accessory structure conversion to an Accessory Dwelling Unit (ADU) dated March 13, 2024. I have the following technical comments:

The applicant is proposing to convert an existing structure formerly used as a studio into an ADU. The parcel is located in the MDR zone and is NOT in a flood zone.

The applicant has confirmed that the existing structure is connected to sewer and has forwarded to me a video of both the ADU sewer service pipe and the existing home sewer service pipe. Both services appear to be in satisfactory condition although the line serving the main house has substantial root growth in the clay pipe joints. The service should be cleaned via hydraulic jetting and the roots removed to minimize the risk of sewer backups. Otherwise, I have no concerns with the project as proposed.

Please see me if you have any questions.

From: [brian caprari](#)
To: [Wendy Simmons](#)
Subject: Re: Request for Comment - 53 West Elm St. - DUE 3/29
Date: Friday, March 29, 2024 1:01:03 PM
Attachments: [image001.png](#)

Hi Wendy,

PLC does not have any comments on 53 West Elm Street.

Have a great weekend!

Brian

On Fri, Mar 15, 2024 at 10:09 AM Wendy Simmons <WSimmons@yarmouth.me.us> wrote:

For your review:

[Yarmouth Planning Board \(revize.com\)](#)

Thanks. Wendy

Wendy Simmons, SHRM-CP

Administrative Assistant

Planning, Code Enforcement & Economic Development

200 Main Street, Yarmouth ME 04096

207-846-2401

207-846-2438 - Fax

www.yarmouth.me.us



Erin Zwirko

From: Camilla Shannon
Sent: Monday, April 1, 2024 2:58 PM
To: Erin Zwirko; Wendy Simmons
Cc: Timothy Shannon
Subject: In support of ADU application

Dear Members of the Planning Board,

We write in support of our neighbor Janice Cooper's application for an ADU on her property at 53 West Elm Street. The proposed ADU is in keeping with the town's development philosophy: it would create a new, more affordable housing option by infilling in a central location. The proposed ADU would place very little additional burden on the town (no need for new roads, for example). The proposed ADU would also be better for our neighborhood. It would replace what has been an airbnb rental with the regular turn over of guests and cleaners with a home for a stable, new neighbor with a vested interest in the local community.

Sincerely,
Cam and Tim Shannon
47 West Elm Street, Yarmouth

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Camilla Shannon
(c) 617-780-9150