

Town of Yarmouth
MINUTES OF THE PLANNING BOARD MEETING OF
June 7, 2023

The Yarmouth Planning Board held a Hybrid in-person/remote access Business Meeting at **6:00** p.m. on Wednesday **June 7, 2023** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Susan Brita, Jim Saben, Will Rubenstein, Peter Slovak, Chris Vincent, Joanne Crowley, and Ken Smith

Planning Board Absent: None

Staff Present: Kathy Williams, Town Planner; Mark Grylls, Building Commissioner; and Dawn-Marie Flett, Community Development

1. **Meeting Opening:** Chair Joanne Crowley opened the hybrid meeting at 6:01. All Planning Board members were in-person.
2. **LISTENING SESSION #1 on Draft Accessory Apartment Zoning Amendments:** Joanne Crowley welcomed the public to the meeting and introduced the members of the Planning Board, and members from the Community Housing Committee who were also attending the meeting. She noted the recent meeting with the Board of Selectmen on June 6th to get some of their viewpoints on the draft. She outlined the purpose of the Listening Sessions which is to share information used to develop the amendments, provide details on the various provisions and hear from the public on their input and suggestions. Ms. Crowley reviewed the overall Agenda noting that public input will be received after each set of provisions and at the close of the presentation.

The Chair then recognized Town Planner Kathy Williams, who gave the attached PowerPoint presentation that highlighted the various provisions within the proposed amendments, along with supplemental information to educate the public and provide examples. The presentation covered the following provisions in the draft amendments: Purpose & Intent; Ownership & Rentals; General Requirements; Appearance; Dimensional Standards & Minimum Lot Sizes; Unit Sizes; Special Permit & By-Right Options; Records, Inspections & Enforcement; Existing Family Related & Affordable Apartments; and Transfer Upon Sale. Public comment received throughout the presentation included the following (several provisions received no public comment or questions):

a. **Ownership & Rentals:**

- 1) **Daniel Riek:** Mr. Riek felt that room rentals should be permissible to allow for roommates and sharing of apartments.
- 2) **Kieran Healy:** Mr. Healy questioned the requirement for a 12-month lease, noting the huge demand for seasonal housing for workers. He suggested 90 day or 120-day minimums to consider another population of workers.
- 3) **Debbie Martin:** Ms. Martin agreed with Mr. Healy and indicated the greatest need is for year-round and seasonal employee housing, and that we did not need more seasonal vacation homes.
- 4) **Dick Martin:** Mr. Martin acknowledged that we need year-round housing, but he expressed concerns about the number of bedrooms and septic systems.

b. General Requirements:

- 1) Chris Greeley: Ms. Greeley asked why the existing Affordable Accessory Apartments did not have deed restrictions on them. Kathy Williams noted that there may be a number of reasons why the deed restrictions were not formally recorded, but that she did not know the specifics and that it only applied to 3 apartments.

c. Appearance:

- 1) Chris Greeley: Ms. Greeley asked about the number of cars the homeowner could park on their lot and could it be more than 2 parking spaces, noting that she has seen properties with 4-5 cars. Kathy Williams indicated the current zoning bylaw does not restrict the number or location of parking on a single-family lot, however, if you are adding an accessory apartment, the draft amendments outline where those parking spaces can be located.

d. Dimensional Standards:

- 1) Sharon DiGennaro: Ms. DiGennaro inquired about her lot and whether it was a grandfathered lot.
- 2) Daniel Riek: Mr. Riek noted that we already have maximum building coverage requirements and feels including a minimum lot size is double regulation and should go away. He felt we should focus on one way to limit and feels the other restrictions are redundant.
- 3) John Henderson: Mr. Henderson lives in the Cummaquid Heights neighborhood where the majority of the development is located in Barnstable. He inquired as to the differences between the Barnstable Accessory Dwelling Unit (ADU) bylaw and the proposed Yarmouth amendments and whether material differences would impact resale of his property. Kathy Williams indicated the Barnstable ADU bylaw was more lenient and she could follow up with more information.
- 4) Dawn Jackson: Ms. Jackson inquired about the ability to install a "tiny home". Mark Grylls indicated that tiny homes do not meet the building code now but that they are working on it. Ms. Jackson also inquired about insurance requirements for additions. Kathy Williams indicated that lenders may require specific insurance requirements if there is a loan involved. Ms. Jackson indicated that the overall costs to create a unit may be too costly. She also inquired about the rental rates for a one-bedroom apartment, with Jim Saben indicating it can be \$1,500-\$2,000 per month if one is even available.
- 5) Sharon DiGennaro: Ms. DiGennaro had specific questions regarding her property where she thought she had a 3-bedroom home and could create an apartment in her basement for a caregiver and asked if she was grandfathered. Ms. Williams indicated she would need to coordinate with the Health Dept.
- 6) Debbie Martin: Ms. Martin inquired about the upgrades to septic systems that may be required to add bedrooms for an accessory apartment and whether those upgrades could be deferred if you are going to be connecting soon to the municipal sewer system. Kathy Williams indicated this was unlikely as you are adding a new use and flow. Ms. Martin noted that upgrades would be significant money for a short period of time depending upon where you live and what phase of the municipal sewer system you are in. Mr. Grylls noted that Title V septic regulations require the construction of a minimum 3-bedroom septic, even if you are restricted to less bedrooms if located in the zone 2 wellhead contribution area.

e. **Unit Sizes:**

- 1) Daniel Riek: Mr. Riek felt there were too many redundant requirements. Setting unit sizes has no purpose if have building coverage requirements and health regulations.

f. **Special Permits & By-Right Options:**

- 1) Kieran Healy: Mr. Healy noted that the APD closely follows the Zone 2 and we do not need to add in a Special Permit requirement for the APD as the Zone 2 is already restrictive. Mr. Healy suggested including some guidance language in the zoning bylaw for the ZBA to allow some flexibility if someone can't completely meet the setback requirements due to an unusual circumstance.
- 2) John Henderson: Mr. Henderson had questions about rental and residency and whether you can leave for several months. Kathy Williams indicated your primary residence is where you pay state taxes and where you would vote. If you pay taxes in another state because you live there for 183 days, that would be your primary residence. If the property is no longer the owner's primary residency, they would no longer be eligible for an accessory apartment and would need to remove the kitchen. Homeowners have the option to live in the accessory apartment and rent out the primary home.
- 3) Sharon DiGennaro: Ms. DiGennaro asked about the removal of bedrooms within the main home to accommodate an accessory apartment and that the doorways in her home cannot be widened as she cannot reshape the entrance to the room. Kathy Williams indicated that this would not be something defined by zoning but would be through the Health Department.
- 4) Daniel Riek: Mr. Riek asked for clarification on the residency requirements and whether it is a requirement to pay Massachusetts income tax and be registered to vote in Yarmouth. Kathy Williams indicated being a registered voter or eligible to be a registered voter in Yarmouth makes it a clear determination that your primary residence is in Yarmouth. The draft bylaw requires primary residency and not just property ownership.
- 5) Stacy Ober: Ms. Ober indicated everyone has to identify where we are domiciled, where we are choosing to have our primary residence.
- 6) Daniel Riek: Mr. Riek suggested changing the amendments to allow property owners who are not full-time residents (such as 2nd home owners) to be eligible for an accessory apartment, to promote the creation of more units. These 2nd homeowners may like to have someone on their property year-round. The requirement for only renting out one unit would remain.
- 7) Stacy Ober: Ms. Ober feels this undercuts the purpose of the accessory apartment amendments. The concerns from the citizen petition language from last fall was that if not a primary residence and broad definition of owner, we could have investors come in and rent both the accessory apartment and primary residence.

At this point, Kathy Williams and Planning Board members clarified that the citizen petition from last fall allowed for both units to be rented and the currently proposed draft amendments only allow for one to be rented with the objective of having the landlord on site and not off-site investors. Kathy Williams inquired as to how those present would feel about changing the bylaw to allow for 2nd homeowners to have an accessory apartment, not just primary residents, or do we want the homeowner there essentially year-round.

- 8) John Henderson: Mr. Henderson says it hinges on definition of year-round and how long someone must be at their home. Joanne Crowley noted a definition Kathy Williams provided to an inquiry which stated: A primary or principal residence is the dwelling where a person usually lives. A person may have only one primary residence at any given time

and is used for legal purposes such as determining where a person votes or pays state taxes. The principal residence is a requirement in the current Accessory Apartment bylaw.

- 9) Chris Greeley: Ms. Greeley feels that primary residency is an important feature of this bylaw and is significant for quality of life.
- 10) Mark Fallon: Mr. Fallon liked the "domicile" residency as there is already a legal state definition that is used.
- 11) Dick Martin: Mr. Martin expressed concerns with the potential impacts to community character. The Town increased lot sizes to protect quality of life, water quality and beaches. Although there are extra safeguards in the APD zone which limit the number of bedrooms, in other districts you can turn a single-family home on a 10,000-sf lot into a two family home with more people, cars and septic. Recognize we need housing but need to look at this more carefully before creating duplexes on 10,000 sf lots. He also noted a lot of local neighborhood restrictions that may limit the lots to single family homes although this is not regulated by the town.
- 12) Debbie Martin: Ms. Martin inquired as to the number of lots which would qualify and of those, how many would get created once you take away septic restriction and those who don't want to do it anyways. Kathy Williams indicated 80% of the 13,000 lots are over 10,000 square feet with about 3,600 lots wholly within the Zone 2. Jim Saben estimated about 100 apartments over 10 years taking into consideration all the other restrictions and what other communities have seen. The Planning Board talked about developing some additional data to estimate the number of units that could be created by-right.
- 13) Maureen R. (remote): With regard to request for data, she was most interested in by-right units that would be exterior additions or detached structures and not those created inside the home and not as visible.
- 14) Sharon DiGennaro: Ms. DiGennaro also noted that socio-economic position in town is important. Those on fixed incomes may be more interested in an accessory apartment versus those who are financially sound.
- 15) Dawn Jackson: Ms. Jackson asked if duplexes were allowed in Town. Kathy Williams indicated duplexes are allowed but require twice the minimum lot size. There are very few private properties that would qualify, although we already have a number of grandfathered duplexes in Town. Most of the undeveloped land is owned and protected by the Town.

g. Records, Inspections & Enforcement:

- 1) Chris Greeley: Ms. Greeley asked if the affidavits require proof that the property is the owner's primary residence. Kathy Williams indicated this was something that would be included in the affidavits, along with adherence to the rest of the bylaw.

h. Existing Family Related & Affordable Apartments:

- 1) Kieran Healy: Mr. Healy questioned why a Special Permit was required to convert an existing accessory apartment to an unrestricted apartment. He suggested either by-right or via the Planning Board. Susan Brita noted that it was a question of changing the use from family related to an open rental with no restrictions. Mr. Healy suggested they give some guidance to the Board of Appeals. Kathy Williams indicated that the Special Permit for the conversion would provide a mechanism to remove the Declaration of Covenant and have a new Special Permit recorded at the Registry that no longer restricts the accessory apartment use.

i. **Transfer Upon Sale:** Jim Saben asked if the Building Commissioner had any concerns about the 45-days and whether that was too short. Mr. Grylls indicated the 45-days was sufficient to notify him that they plan on continuing the use and it has been working so far.

j. **Final Public Comments:**

- 1) **Chris Greeley:** Ms. Greeley bought her home based on the character and appearance of the neighborhood. She noted the contrast between choosing Yarmouth as a home versus someone who is an investor, so she appreciates the primary residency and year-long rental requirements. She noted that enforcement is concerning with the level of understaffing and workloads of Town Staff. She would like to see some type of disclosure process to abutters, so it isn't a surprise when the construction crews show up next door. Ms. Greeley noted environmental concerns, especially on such small lots, with septic systems, cars and groundwater impacts, and adding a lot more use before we have municipal wastewater. She further noted there are properties also being looked at for multi-family affordable housing. She expressed appreciation for the work done but also has some concerns.
- 2) **Daniel Riek:** Mr. Riek felt this was a step in the right direction. Housing issues are a societal problem with people and workers not being able to find housing. He supports creating more living spaces but feels there are too many restrictions.
- 3) **Kieran Healy:** Mr. Healy wanted to be clear that although he expressed some concerns, he is 100% for moving forward with these zoning amendments.
- 4) **Sharon DiGennaro:** Ms. DiGennaro noted some of her personal circumstances that would make having an accessory apartment for a caregiver very beneficial to her and she wants to be able to create a legal accessory apartment in her home.

k. **Written Comments:** Kathy Williams noted that the attached written comments were provided to the Planning Board and summarized at the meeting as follows:

- **Kathy Campbell:** Ms. Campbell is in favor of keeping the special permit requirements currently in effect and not making any changes to the current permitting process.
- **John Cooke:** Mr. Cooke indicated the only successful way to administer and monitor ADUs is to require a special permit, where all applicants are treated the same with regard to public notice.
- **Ryan Castle:** Mr. Castle inquired about the definition of "principal residence" and requested information on the number of lots under 10,000 sf, which was provided to him.
- **Cape Cod & Islands Association of Realtors (CCIAOR):** Ms. Williams noted that the CCIOAOR sent out an email publicizing the Listening Sessions and offered some initial comments to keep the bylaw simple, allow 2nd homeowners the right to build an accessory apartment and allow them to be permitted by-right.
- **Debbie Hays:** Ms. Hays wanted accessory dwellings to be allowed in Yarmouth with the caveat that they be for local employed workers.

3. **Upcoming Meetings:**

- a. June 14, 2023: Second Listening Session-In Person Meeting at Senior Center
- b. June 21, 2023: Regular Planning Board Business Meeting
- c. June 26, 2023: Third Listening Session-In Person Meeting at Fire Station #2, Yarmouth Port
- d. July 5, 2023: Regular Planning Board Business Meeting

The Planning Board had a brief discussion on the Draft Open Space & Recreation Plan which will be coming before the Planning Board for review and approval sometime in July.

4. **Staff Update:** The Request for Proposals (RFPs) for the Local Comprehensive Plan (LCP) received no responses. Based on conversations with several consultants, Kathy Williams indicated that consultants are also having staffing and workload issues and did not feel they could take on a project of this size at this time. Ms. Williams also mentioned the recently submitted Community Planning Grant Fund application to look at redevelopment along Route 28, If this grant is awarded, it could possibly be combined with the LCP RFP. The Board had a brief discussion on how this would delay the certification of the LCP and the impacts of the delay.
5. **Adjournment: VOTE:** On a motion by Jim Saben and seconded by Will Rubenstein, the Planning Board voted unanimously (7-0) to adjourn at 8:10 PM.

ATTACHMENTS:

- **June 7, 2023 Agenda**
- **Sign-In Sheet and Remote Participant List**
- **Draft Accessory Apartment Zoning Amendments:** Accessory Apartment Listening Session Flyer; Summary of Draft #12 Accessory Apartment Zoning Amendments; Accessory Apartments Listening Session PowerPoint Presentation; Accessory Apartment Zoning Amendment, Draft #12, dated May 4, 2023; Frequently Asked Questions (FAQs) on Accessory Apartments, dated May 4, 2023; 5 written comments and Draft June 6, 2023 Meeting Notes with BOS.

Approved on June 21, 2023:

On a motion by Ken Smith, and seconded by Jim Saben, the Planning Board voted (5-0) to approve the meeting minutes of June 7, 2023, with Jim Saben, Susan Brita, Ken Smith, Peter Slovak and Joanne Crowley voting in favor.