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November 29, 2016

VIA EMAIL & U.S. MAIL

Ms. Maureen O'Meara  
Cape Elizabeth Town Planner  
320 Ocean House Road  
Cape Elizabeth, Maine 04107

RE: Accessory Buildings, Overnight Accommodation and Short Term Rentals

Dear Maureen:

I represent Appletree Cottage LLC ("Appletree") and am writing to supplement the memorandum submitted by its Manager Tom Egan on October 21, 2016. It is my understanding that the Planning Board will evaluate proposed Zoning Ordinance amendments, including an amendment to the definition of "Accessory Building or Structure" under § 19-1-3, at its December 6 workshop. Consistent with Mr. Egan's memorandum, I offer additional comments on this proposed amended definition and draw attention to important, interrelated proposed changes to the Short Term Rental Standards for the Planning Board's consideration next week.

### A. Definition of "Accessory Building or Structure."

The Town has proposed an amended definition of "Accessory Building or Structure" in § 19-1-3 of the Zoning Ordinance as follows:

14 **Accessory Building or Structure:** A detached, subordinate building, the use of which is clearly  
15 incidental and related to that of the principal building or use of the land, and which is located on  
16 the same lot as the principal building or use. Any accessory building or structure that has  
17 plumbing shall not be used for overnight accommodations. For residential uses, accessory  
18 buildings and structures shall include, but not be limited to, the following:  
19  
20 1. garage  
21 2. gazebo  
22 3. greenhouse  
23 4. home workshop, as defined below  
24 5. recreational facilities for the use of occupants of the residence, such as a  
25 swimming pool or a tennis court, and related structures  
26 6. Agricultural or aquacultural buildings or other structures (Effective June 10,  
27 2010)  
28 7. wharf, dock, landing, or boathouse  
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Appletree takes no issue with residents' ability to continue their traditional, occasional overnight use of Accessory Buildings such as setting up cots in a gazebo or allowing visitors to stay overnight in a detached garage. Such uses are common in Cape Elizabeth. However, specific-purpose bedroom use of accessory buildings, with or without plumbing, should be prohibited. This prohibition is consistent with § 19-1-3, which lists examples of "clearly incidental" uses (*i.e.*, garage, gazebo, greenhouse, pool house, tennis court, etc.). A detached bedroom structure is simply not an accessory use that is clearly incidental to residential primary use. Bedrooms are an essential component of a Dwelling. Accordingly, Appletree respectfully asks the Planning Board to consider amending the proposed language in "Definitions" at § 19-1-3 as follows:<sup>1</sup>

**Accessory Building or Structure:** A detached, subordinate building, the use of which is clearly incidental and related to that of the principal building or use of the land, and which is located on the same lot as the principal building or use. ~~Any accessory building or structure that has plumbing shall not be used for overnight accommodations.~~ For residential uses, accessory buildings and structures shall include, but not be limited to, the following . . . The Code Enforcement Officer shall not issue a building or remodeling permit or a certificate of occupancy for an accessory building, with or without plumbing, where the purpose of the accessory building is solely or primarily for overnight accommodation.

#### B. Short Term Rental Standards.

The Code Enforcement Officer interprets the Zoning Ordinance to hold that an Accessory Building or Structure is not a *Dwelling* or *Accessory Dwelling Unit* because an Accessory Building or Structure may not contain all three features essential to a Dwelling: cooking, sleeping, and toilet facilities. The Zoning Ordinance at § 19-1-3 limits Short Term Rentals to the use of a Dwelling. Accordingly, by interpretation of the Ordinance alone, an Accessory Building or Structure cannot be used as a "Short Term Rental."

The Short Term Rental provisions of the Ordinance do not, however, explicitly prohibit overnight accommodation in an Accessory Building that does not have all three features of a Dwelling or Dwelling Unit (*i.e.*, cooking, toilet, and sleeping quarters). Some rental operators are exploiting or trying to bypass this particular ambiguity for their economic benefit. For instance, rental operators may try to benefit from less stringent setback requirements that apply

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<sup>1</sup> Appletree's proposed amendment is depicted in blue. Appletree proposes to strike the currently proposed new language, depicted in red.

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to Accessory Buildings. Dwelling setbacks, however, are different from accessory building setbacks for a reason.

In most cases, a single-family home in a built up neighborhood is the most significant asset the family has in monetary and emotional terms. As the Short Term Rental Permit Application states, "Cape Elizabeth residents prize the peace and quiet of their residential neighborhoods . . . . The purpose of establishing short term rental standards is to balance the desire of property owners to rent their properties to short-term tenants and the desire of residents to preserve the peaceful quiet and enjoyment of their single-family neighborhoods." Appletree proposes a new Short Term Rental standard to balance these competing interests:

§ 19-8-14(E)(7). Use of Accessory Buildings or Structures for Overnight Accommodations. No Accessory Building or Structure may be permitted or used for overnight accommodation at any Short Term Rental property.

Appletree urges the Town to adopt the Ordinance language as written above as a very clear statement of policy and regulation to protect the stable, single-family culture of our neighborhoods and citizens' property values.

### C. Cape Farm Alliance

Appletree supports Town policy that enables farmers to provide overnight accommodations for workers. If family businesses that operate agricultural properties in Town seek to include overnight rentals then the Ordinance can be adapted accordingly, at the discretion of the Town Council.

I will attend the December 6 Planning Board workshop, prepared to address the Planning Board to explain Appletree's positions and to answer any questions.

Very truly yours,



Laura A. Rideout, Esq.

cc. Planning Board