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October 23, 2020

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Jennifer Peters, Chair
Yarmouth General Board of Appeals
200 Main Street
Yarmouth, ME 04096

VIA EMAIL

Re: Rundquist Appeal; Jurisdiction of General Board of Appeals

Dear Chair Peters and Members of the General Board of Appeals:

Our firm represents the Town of Yarmouth, and I have been asked to assist the General Board of Appeals (the "Board") with the pending appeal by Rebecca Rundquist of the Planning & Development Director's zoning interpretation. This letter is in response to your request to provide a summary of the General Board of Appeals jurisdiction to hear administrative appeals.

The Maine Law Court has recently held that a written decision interpreting a land use ordinance is appealable to a Board of Appeals, whether the officer finds "that there is or is not a violation - so long as the ordinance does not expressly preclude appeal." *Raposa v. Town of York*, 2019 ME 29, 204 A.3d 129, 132. Thus, it is important to review the specific provisions in the Town's ordinances. The Board's jurisdiction regarding administrative appeals of zoning determinations is outlined in two separate locations in the Town's Code of Ordinances, and the relevant provisions are as follows:

1. General Board of Appeals Ordinance, Section F.3

The Board of Appeals' authority does not include appeals from any enforcement decisions made by the Code Enforcement Officer, Building Inspector, or other enforcement official. The term enforcement decisions refer to violation determinations and enforcement actions taken by the enforcement official. The Board of Appeals shall have no authority to act in any other matter except as expressly provided by ordinance or statute.

The Board of Appeals will have the power to hear [and] decide all administrative appeals on a de novo basis, where it is alleged that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Permitting Authority in a

review of a permit application under the ordinances listed in Subsection I(F)(1). When acting in a de novo capacity, the Board of Appeals shall hear and decide that matter afresh, undertaking its own independent analysis of the evidence and the law, and reaching its own decision.

2. Zoning Ordinance, Article VII.B.2.a

Administrative Appeals. To hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made by any officer in the interpretation of this Ordinance. The action of the officer may be modified or reversed by the General Board of Appeals. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Ordinance is not appealable to the General Board of Appeals but may be appealed directly to Superior Court.

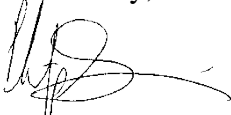
Under the provisions in the Town's Ordinances, the Board has the jurisdiction to hear appeals from decisions in the interpretation of the Zoning Ordinance, but not from enforcement decisions.

In the case of the pending appeal, the Planning Director issued a zoning determination upon request of Ms. Rundquist to review the use of the accessory structure at 53 West Elm Street under the Town's Ordinances. While the distinction is not completely clear between a) a zoning determination and review of whether an existing use is permitted, and b) an enforcement determination that there is no violation - in this case, the Planning Director's written decision was titled a "Zoning Determination" and did not explicitly address the use in the context of whether there was a violation but instead engaged in an analysis of the applicable provisions in the Zoning Ordinance and concluded that an out-building may be used as a bedroom as long as it receives a Certificate of Occupancy for habitation. I would also note that the Planning Director included reference in his written determination of the right to appeal his decision including a citation to the administrative appeal provisions in Article VII.B.2, potentially suggesting that he viewed his determination not as an enforcement decision but instead as an interpretation appeal.

Since jurisdiction is a threshold matter, the Board should first decide whether the Planning Director's Zoning Determination is appealable under the Town's Ordinance before addressing the merits of the appeal.

I hope this is helpful, and I will be in attendance at the Board's October 26th meeting if you have any other questions.

Sincerely,



Philip R. Saucier