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# YARMOUTH GENERAL BOARD of APPEALS

## Administrative Appeal Standards, Findings, & Decision General Board of Appeals Meeting of October 26, 2020

### Applicant/Project Description

**Administrative Appeal of Planning Director Zoning Determination under Chapter 701, Article VII.B.2.a; Rebecca Rundquist, Appellant, Re: Approval to Use Out-Building as a Bedroom at 53 West Elm St., MDR Zone, Janice Cooper, Owner; Map 41 -Lot 71.**

The Yarmouth General Board of Appeals reviewed the above appeal at its meetings on October 26 and November 2, 2020 and heard from the Appellant, the Owner, and members of the public on the appeal of the Planning Director's August 17, 2020 Zoning Determination that the use of an out-building at 53 West Elm Street may be used as a bedroom if it first receives a certificate of occupancy.

Reference: Chapter 701, Article VII, Section B.2.a. (General Board of Appeals, Powers and Duties) of the Town's Zoning Ordinance, and Chapter 203, Article C. & F. of the Town's General Board of Appeals Ordinance.

### **Chapter 203, General Board of Appeals, Article C. Appeals to the GBA (Standing)**

1. The Board of Appeals may exercise jurisdiction only upon receipt of a written appeal from a person aggrieved, filed within 30 days of the decision complained of, stating the relief sought and the grounds thereof. The appeal shall be filed with the Town Clerk on forms to be approved by the Board of Appeals.

### Findings of Fact and Conclusion of Law:

The Appellant **does** have Standing as an abutter to 53 West Elm Street.

Findings and conclusion moved by Phil Ahrens, seconded by Tom Marjerison, and voted 5 in favor, 0 opposed, Vote conducted by roll call.

### **Chapter 203, General Board of Appeals, Article C. Appeals to the GBA (Timeliness)**

1. The Board of Appeals may exercise jurisdiction only upon receipt of a written appeal from a person aggrieved, filed within 30 days of the decision complained of, stating the relief sought and the grounds thereof. The appeal shall be filed with the Town Clerk on forms to be approved by the Board of Appeals.

### Findings of Fact and Conclusion of Law:

The appeal **was** timely filed as the appeal was filed on September 15, 2020.

Findings and conclusion moved by Craig Wolf, seconded by Phil Ahrens, and voted 5 in favor, 0 opposed, Vote conducted by roll call.

## **Chapter 203, General Board of Appeals, Article F. Jurisdiction, Power and Duties**

The Board of Appeals is authorized to hear variances and decide appeals from decisions, actions, or failure to act by the following officials and in the following matters:

1. By permitting authority in the administration or issuance of permits and approvals, or establishment of conditions thereon (if any), subject to paragraph 3 below:
  - a. Chapter 301 – Building Code
  - b. Chapter 304 – Sewerage Ordinance
  - c. Chapter 311 – Electrical Code
  - ...
  - m. Chapter 701 – Zoning Ordinance

## **Chapter 701, Zoning, Article B Power and Duties**

### **B. POWERS AND DUTIES**

1. Appeals  
Appeals shall lie from the decision of the Planning Director or his/her duly authorized agent to the General Board of Appeals and from the General Board of Appeals to the Superior Court according to the provisions of Maine Revised Statutes.
2. The General Board of Appeals shall have the following powers and duties under this Ordinance:
  - 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.

#### **Findings of Fact and Conclusions of Law:**

The General Board of Appeals **does** have jurisdiction since the Planning Director's Zoning Determination was an interpretation of the ordinance and not an enforcement decision.

**Findings and conclusion moved by Craig Wolf, seconded by Tom Marjerison, and voted 5 in favor, 0 opposed, Vote conducted by roll call.**

**Voted by the Town of Yarmouth General Board of Appeals on October 26, 2020**

**On the Merits of the Appeal:**

- Motion to find that there **is no** error in the Zoning Determination made by the Director of Planning & Development regarding the use of the out-building at 53 West Elm Street and therefore **deny** the appeal.

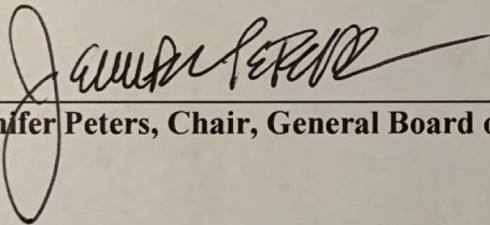
**Findings of Fact and Conclusions of Law (Correct determination if appeal is granted):**

There was no error in the zoning determination regarding the use of the outbuilding with the following proviso: while the host/owner may sleep overnight in the outbuilding during a short-term rental of part of their property, it is only permissible if the property retains the characteristics of a single family detached dwelling which is an allowed use in the MDR District. The renter and owner must have reasonable shared access to the dwelling.

Such motion moved by Craig Wolff, seconded by Tom Marjerison voted 5 in favor, 0 opposed. Vote taken by roll call.

**Voted by the Town of Yarmouth General Board of Appeals on November 2, 2020**

**Signed by:**



**Jennifer Peters, Chair, General Board of Appeals**

*11.9.20*

**Date**