
YARMOUTH GENERAL BOARD of APPEALS

Administrative Appeal Standards, Findings, & Decision General Board of Appeals Meeting of October 26, 2020 held by Zoom

Applicant/Project Description

Denise and Craig Benson, owners of property at 104 Spruce Point Rd., Map 54 Lot 27, have filed an Administrative Appeal of the Planning Board's August 26, 2020 denial of their Shoreland Zoning Permit application for an expanded float and accompanying request for waiver of maximum float size. The Planning Board heard and denied that application under Yarmouth's Zoning Ordinance, Chapter 701, Article II R.

Reference: Chapter 701, Article VII, Section B.2.a. (General Board of Appeals, Powers and Duties) of the Town's Zoning Ordinance, Chapter 202 H. of the Town's Planning Board Ordinance, and Chapter 203, Article C. & F. of the Town's General Board of Appeals Ordinance.

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

1. 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:

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

Findings of Fact and Conclusions of Law:

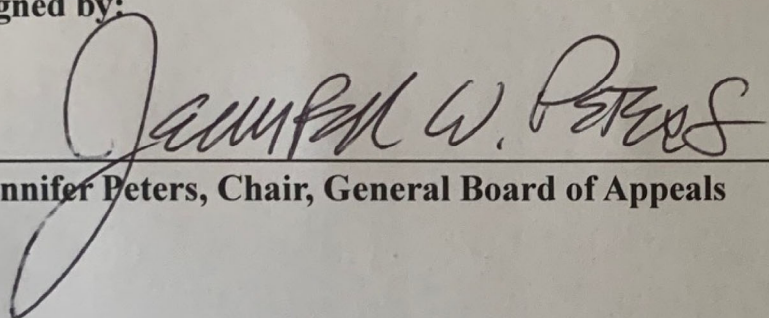
Under Maine law (30-A M.R.S. §2691(4)), a zoning board of appeals has such jurisdiction as a municipality provides it by charter or ordinance ("No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board."). Yarmouth's Planning Board Ordinance reads at Chapter 202 H.: "An appeal from a decision of the Planning Board shall be taken directly to Superior Court, pursuant to the provisions of the Maine Rules of Civil Procedure." This provision clearly sets out the Town of Yarmouth's position that Planning Board decisions are appealed directly to the Maine courts and not to Yarmouth's General Board of Appeals. This interpretation is supported by Article VII B.1. of the Chapter 701 Zoning Ordinance, which provides for appeals to the General Board of Appeals "from the Decision of the Planning Director or his/her duly

authorized agent," and not from the Planning Board. Other provisions for Chapter 701 can be read in consonance with these general provisions of Chapter 202 H and Chapter VII A. 1. Therefore, the Board concludes that it has no jurisdiction to hear the instant appeal, as consistent with 30-A M.R.S. §2691(4), Yarmouth's ordinances specify that appeals from a Planning Board decision such as this are taken directly to the Maine Superior Court and not to this Board.

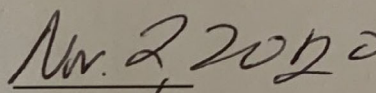
Motion to deny the appeal for lack of jurisdiction for the above reasons moved by Phil Ahrens, seconded by Craig Wolff, and approved by vote of 4 (Jennifer Peters, Phil Ahrens, Sam Carter, Craig Wolff) in favor, 1 (Tom Marjerison) opposed, Vote conducted by roll call.

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

Signed by:



Jennifer Peters, Chair, General Board of Appeals



Date