
YARMOUTH GENERAL BOARD of APPEALS

Administrative Appeal Standards, Findings, & Decision General Board of Appeals Meeting of October 6, 2021

Applicant/Project Description

Administrative Appeal of Code Enforcement Officer Zoning Determination under Chapter 701, Article VII.B.2.a; Eugene Miller, et al. Appellants, Re: Approval of Building Permit #B21-187 for Accessory Structure at 538 Portland St., MDR Zone, Ed Libby, Owner; Map 30 -Lot 14.

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 Appellants **do** have Standing. The General Board of Appeals found that the appellants being located on a small cul-de-sac road, Astilbe Lane, which is the site of the new driveway entrance and is only accessible via Portland Street where the subject property is located do suffer an injury different than the general public.

Findings and conclusion moved by Phil Ahrens, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

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 within 30 days of the issuance of the Building Permit.

Findings and conclusion moved by Phil Ahrens, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

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 VII.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 under Chapter 203, Article F and Chapter 701 Article VII.B.

Findings and conclusion moved by Craig Wolff, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

On the Merits of the Appeal:

Findings of Fact and Conclusions of Law:

The General Board of Appeals found that the structure is not an accessory structure and is not incidental and subordinate to the existing Single Family Detached Structure at 538 Portland Street for the following reasons:

1. The size of the structure does not determine whether an Accessory Structure is incidental and subordinate, but the grouping of spaces proposed for the specific structure at 538 Portland Street exceed what could be reasonably considered incidental and subordinate;
2. The attributes of the structure, and the many different uses that it can serve, demonstrate that it is not dependent on the existing Single Family Detached Structure;
3. The distance of the structure from the existing Single Family Detached Structure is further than what could reasonably considered supporting the primary dwelling unit; and
4. The addition of the second driveway on Astilbe Lane to serve the structure suggests that the use of the structure is not incidental and subordinate to the existing Single Family Detached Structure but rather is positioned on the property to function as a primary residence.

A motion was made by Craig Wolff and seconded by Sam Carter to find that there **is** error in the Zoning Determination made by the Code Enforcement Officer that as an Accessory Structure the proposed structure meets the intent of the ordinance and is in fact incidental and subordinate to the existing Single Family Detached Dwelling at 538 Portland Street and therefore **grant** the appeal.

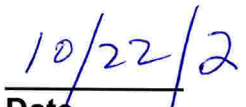
Based on the above findings and conclusions, the Code Enforcement Officer's decision was in error and the appeal is granted as moved by Craig Wolff, seconded by Sam Carter, and voted 4 in favor, 0 opposed, Tom Marjerison, recused.

Voted by the Town of Yarmouth General Board of Appeals on October 6, 2021.

Signed by:



Jennifer Peters, Chair, General Board of Appeals



Date