

**CITY OF BELFAST
ZONING BOARD OF APPEALS**

FINDINGS AND DECISION

**In re: Upstream Watch's Appeals of
December 22, 2020 Decisions of the Belfast Planning Board**

To: Upstream Watch
c/o David B. Losee, Esq.
7 Highland Ave.
Camden, ME 04843

Nordic Aquafarms
c/o Joanna B. Tourangeau, Esq.
Drummond Woodsum
84 Marginal Way
Portland, ME 04101

Wayne Marshall, Project Planner
City of Belfast
131 Church St.
Belfast, ME 04915

City of Belfast Planning Board
c/o William S. Kelly, Esq.
96 High St.
Belfast, ME 04915

Background and Procedural Matters

Pending before the Zoning Board of Appeals ("the Board") is an appeal filed by Upstream Watch ("Upstream") from the Planning Board's decisions, dated December 22, 2020 to grant five permits to Nordic Aquafarms ("Nordic").

The Board convened for hearing on March 4, 2021 at 6:15 p.m. The following members were present: Chairperson Peter Nesin, Michael Nickerson, Douglas Smith, Roger Pickering, and Lewis Baker. Attorney David Losee appeared on behalf of Upstream. Attorney Joanna B. Tourangeau appeared on behalf of Nordic. City Attorney William S. Kelly appeared on behalf of the Planning Board.

Following a call to order, roll call, a vote to adopt the agenda, and a vote to adopt the minutes of the February 18, 2021 meeting, the Board considered whether Upstream had demonstrated standing to appeal the decisions of the Planning Board.

Findings of Fact

1. The Planning Board rendered its decisions on December 22, 2020.
2. The deadline to appeal the decisions of the Planning Board to the Zoning Board of Appeals was January 21, 2021.
3. Upstream filed its appeal on January 21, 2021.

4. Belfast, Me. Code § 102-134(a) provides that “[a]n administrative appeal shall be taken within 30 calendar days from the vote taken by the board from which a party is aggrieved . . . Forms for appeal shall be those approved by the Zoning Board of Appeals, and the aggrieved person shall set forth on said forms the grounds for the appeal.”
5. The Ordinance defines an “aggrieved party” as “a person whose land is directly or indirectly affected by the granting or denial of a permit or variance under the provisions of the zoning regulations (chapter 102), the shoreland zoning regulations (chapter 82) and the site plan review regulations (chapter 90), or a person whose land abuts land for which a permit or variance has been granted.”
6. The Application for Administrative Appeal form approved by the Zoning Board of Appeals instructs an appellant to “Describe why you believe you have ‘standing’ to file an appeal.”
7. In response to this request, Upstream provided the following: “Upstream Watch was qualified by the planning board as an “interested party” and participated fully in the planning board proceedings. Upstream Watch was formed to restore the Little River that abuts the project. Volunteers use the trails, the bay and the river.”
8. At the time of filing of its appeal, Upstream filed, together with its completed Application for Administrative Appeal form, substantial written material setting out the basis for its appeals.
9. Pursuant to the Zoning Board of Appeals’ First Procedural Order, Nordic submitted written responses to Upstream’s appeals. Included in those written responses was the argument that Upstream did not have standing to appeal.
10. Pursuant to the First Procedural Order, Upstream responded to Nordic’s argument that Upstream lacked standing. In support of its argument that it did have standing, Upstream included affidavits signed by members of Upstream, which had not previously been submitted and were dated after January 21, 2021.

Decision

1. Upstream filed a timely written appeal to the Zoning Board of Appeals.
2. Upstream participated in the proceedings before the Planning Board.
3. Upstream failed to establish that it was “an aggrieved party,” that is, aggrieved by the decisions of the Planning Board, within 30 days of the decision of the Planning Board.
4. Upstream therefore does not have standing to appeal the decisions of the Planning Board.

5. The Board therefore does not have jurisdiction to consider the appeals of Upstream.

VOTED: Upstream Watch, in trying to establish standing, needs to rely on information submitted within thirty (30) days of the appeal period.

(VOTE: 4-1)

VOTED: The Zoning Board of appeals must decide the preliminary requirement if the Applicant, Upstream Watch, has standing to appeal.

(VOTE: 5-0)

VOTED: The Applicant, Upstream Watch, must show that they had active participation for the record in the local hearing process, and that the Appeals Board finds that the Applicant does meet this part of the test.

(VOTE: 5-0)

VOTED: The Applicant, Upstream Watch, as a citizen's group, must demonstrate that at least one of its members must pass the particularized injury test to pass the second part of the test to achieve standing, and the Appeals Board further finds that Upstream Watch, on their application for an administrative appeal, and in the section provided to them to enter this information that they relied upon to achieve standing, that they did not provide any information on the particularized injury test.

(VOTE: 5-0)

VOTED: The Applicant, Upstream Watch, does not pass the two-part test to achieve standing to appeal the permits granted to Nordic Aquafarms by the Belfast Planning Board.

(VOTE: 5-0)

VOTED: The Applicant, Upstream Watch, does not have standing to appeal the permits granted by the Belfast Planning Board to Nordic Aquafarms, and the Zoning Board of Appeals therefore denies the appeal.

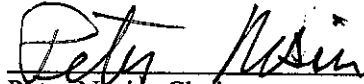
(VOTE: 5-0)

Right of Appeal

Any party may take an appeal of the Board's decision, within 45 days of the date of the vote on the original vote, to Superior Court in accordance with the Maine Rules of Civil Procedure, except as otherwise provided by statute.

Date: March 11, 2021

BELFAST ZONING BOARD OF APPEALS

A handwritten signature in cursive script, appearing to read "Peter Nesin", written over a horizontal line.

Peter Nesin, Chairperson