

**ARTICLE 6**  
**BOARD OF APPEALS**

**Section 1. Appointment and Composition**

- A. There shall be a Board of Appeals consisting of five (5) members and two alternate members all of whom shall be residents of the Town. The members of the Board shall be appointed by the municipal officers. Terms of members shall be for three (3) years with staggered terms, and the members shall serve until their successors are appointed. The alternate members shall be appointed for a term of one (1) year and shall act on the Board in place of members who are unable to act due to a conflict of interest, absence or physical incapacity. The Chairman shall designate which alternate member shall serve in the stead of an absent or excused member. The members of the Board shall annually elect one of their number chairman to preside at all meetings of the Board. The members of the Board shall annually elect a secretary who shall provide for the keeping of the minutes of the proceedings of the Board, which shall show the vote of each member upon each question.
- B. Neither a municipal officer nor his spouse may be a member or alternate member of the Board.
- C. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the remaining members present and voting except the member who is being challenged.
- D. A member of the Board may be removed for cause after notice and hearing by the municipal officers before the expiration of his term.
- E. A quorum shall consist of three members. All votes shall be by majority of those present and voting; provided, however, the concurrent vote of at least four (4) members of the Board shall be necessary to reverse any decision of the Historic Preservation Commission.
- F. Vacancies, forfeitures of office and filling of vacancies shall be governed by the Town Charter except that when there is a permanent vacancy, the municipal officers shall appoint a person within 60 days to serve for the remainder of the unexpired term.

**Section 2. Powers and Duties**

Appeals shall lie from the decision of the Code Enforcement Officer to the Board and from the Board to the Superior Court according to the provisions of Maine law. Except as jurisdiction to hear other matters is otherwise expressly provided for by ordinance, the Board shall have only the powers and duties listed below.

A. Administrative Appeals

To hear and decide administrative appeals where it is alleged there is an error in any order, decision or ruling made by the Code Enforcement Officer in the enforcement of this Ordinance. The action of the Code Enforcement Officer may be affirmed, modified or reversed by the Board. In the event of a tie vote, the action of the Code Enforcement Officer shall be affirmed.

B. Variance Appeals

- (1) To hear and decide applications requesting such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in undue hardship. Except as provided in Section 2.F.(2)(c) of Article 8, use variances may not be granted. A variance may include such conditions and safeguards as are appropriate under this Ordinance. Any variance granted shall be the minimum necessary to relieve the hardship. The words "undue hardship" as used in this subsection mean:
  - (a) That the land in question cannot yield a reasonable return unless a variance is granted;
  - (b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - (c) That the granting of a variance will not alter the essential character of the locality; and
  - (d) That the hardship is not the result of action taken by the applicant or a prior owner.
- (2) Notwithstanding subsection B.(1) above, for the purpose of reviewing requests for setback variances for single family dwellings, the term "undue hardship" shall have the following meaning:
  - (a) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - (b) The granting of a variance will not alter the essential character of the locality;
  - (c) The hardship is not the result of action taken by the applicant or a prior owner;
  - (d) The granting of the variance will not substantially reduce or impair the use of the abutting property; and
  - (e) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance granted under subsection B.(2) shall be limited to permitting a variance from a setback requirement for a single family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a setback requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

(3) Disability Variance

Notwithstanding subsection B(1) above, the Board of Appeals may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board of Appeals shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of

structures necessary for access to or egress from the property with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553, of MRSA, and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

Notwithstanding any other provision of this Ordinance to the contrary, and as a necessary supplement to the above provisions for the granting of disability variances to comply with the federal Americans with Disabilities Act, any single family dwelling lawfully existing as of the effective date of this amendment (June 13, 2007), shall be eligible to expand its footprint by not more than 500 square feet, without regard to the provisions in this Paragraph (3) limiting such variances to ingress and egress improvements only, upon application for a disability variance by the owner/occupant provided:

- (a) the additional footprint and accompanying living area are shown to be the minimum necessary to accommodate the owner/occupant or a member of his immediate family residing in the dwelling who suffers from a physical or mental disability as referenced above, and
- (b) no part of the addition intrudes into any applicable height or lot coverage restrictions; provided, further, the variance application shall remain subject to the further restrictions in subsection 2(C) below. Where it would be unreasonable to require removal of any improvement made pursuant to the granting of such variance, the Board of Appeals shall not require it.

C. Shoreland Overlay District and Resource Protection District.

- (1) Prior to taking action on a variance request for property located within the Shoreland Overlay District or Resource Protection District, the Board shall apply the following standards in addition to the variance standards:

The proposed structure or use would meet the provisions of Article 8, except for the specific provisions which has created the nonconformity and from which relief is sought.

The applicant's submission to the Town shall include the following evidence in support of the requested variance:

- (a) A plot plan showing the location, dimensions and setbacks of all existing and proposed structures.
  - (b) The location of the Shoreland zone line and/or Resource Protection zone line on a plot plan.
  - (c) Documentation of conformance to standards of subsection C.(2). below.
- (2) Prior to voting to grant a variance within the Shoreland Overlay and/or Resource Protection Districts, the Board shall, in addition to determining that the four elements of hardship have been met and that the variance requested is the minimum necessary to address the hardship, shall also determine that the proposed variance conforms to the

following standards:

- (a) will not result in unsafe or unhealthful conditions;
  - (b) will not result in unreasonable erosion or sedimentation;
  - (c) will not result in water pollution;
  - (d) will conserve spawning grounds, fish, aquatic life, bird and other wildlife habitat;
  - (e) will reasonably conserve shoreland vegetation;
  - (f) will reasonably conserve visual points of access to waters as viewed from public facilities;
  - (g) will reasonably conserve actual points of public access to waters;
  - (h) will reasonably conserve natural beauty; and
  - (i) will reasonably avoid problems associated with flood plain development and use.
- (3) A copy of a request for a variance must be forwarded by the Town to the D.E.P. Commissioner at least 20 days prior to action by the ZBA. The material submitted must include the application and all supporting information provided by the applicant. Any comments submitted to the Town, prior to action by ZBA, must be made part of the record and must be considered by the Town prior to taking action on the variance request.

D. Appeals from Other Administrative Boards

The Board shall also have the authority to hear and decide on an appellate basis appeals from other administrative boards if expressly so provided by statute or ordinance. This authority shall include the power to hear and decide special exception appeals from the Planning Board, determinations made by the Historic Preservation Commission and site plan appeals from the Site Plan Review Board, but shall not include review of any action by the Planning Board relative to subdivisions, which shall be appealable directly to Superior Court.

E. Submittal Requirements

Each application for a variance and each administrative appeal shall be submitted to the Board in writing accompanied by statements and/or photographs which shall become part of the record of such application or appeal. Each variance application shall indicate in writing that it has satisfied the required approval standards and each administrative appellant shall indicate the basis for his claim that the Code Enforcement Officer has erred in administering or interpreting the ordinance. In either case, the variance applicant or the appellant shall also indicate in writing that he understands that it is his burden to prove his case to the Board.

F. Board Requirement

In acting upon any variance, the Board shall show, in a written statement filed with its record of the application or appeal and by a statement in the minutes of the Board, how the relief sought fulfills the required conditions or how it fails to fulfill such conditions.

**Section 3. Appeal Procedure**

A. In all cases a person aggrieved by a decision of the Code Enforcement Officer or other administrative employee or agency where expressly so provided by statute or ordinance, shall commence his appeal within thirty (30) days after issuance of a written decision from the Code Enforcement Officer or such other official. The appeal shall be filed with the Town Clerk on forms to be approved by the Board, and the aggrieved person shall specifically set forth on said form the grounds for said appeal. These procedures shall also govern variance applications. In addition for both appeals and variance applications:

- (1) The notice of appeal shall be on a form approved by the Board and shall cite the decision being appealed, identify the property involved and state the specific grounds for such appeal. With any such appeal the appellant shall also list the names and addresses of record, in the most recent tax listing of the Town, of all property owners within 500 feet of the property under appeal. The appellant shall, at the time of the filing of the appeal, deposit with the Town Clerk for the Board a sum not less than fifteen dollars (\$15) toward the cost of advertising such appeal and shall subsequently pay the cost of such advertising and any other expense in the determination of the appeal over and above said fifteen dollars.
- (2) The Town Clerk shall record the date of receipt on the copies of any such appeal and shall forthwith transmit one copy of the notice of appeal to the Board and keep the other copy available in the Town Clerk's office for public inspection.
- (3) The Board, within twenty (20) days from filing of an appeal, shall determine a hearing date and cause to be advertised in a newspaper of general circulation in the Town a notice of the appeal identifying the property involved, the nature of the appeal, and the time and place of public hearing on the appeal. The public hearing shall not be held earlier than ten (10) days after the date of such publication of such notice.
- (4) Within three (3) business days after the date of publication of the public hearing notice, the Board shall mail by certified mail, return receipt requested, a copy of the notice of appeal, as published, to each of the property owners whose property physically abuts the property listed in the appeal. In addition, the Board shall mail the same notices, by first class mail, to the other property owners whose property is located within 500 feet of the subject property. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Board.
- (5) The Board shall keep a record of each appeal entertained, noting the date when received from the Town Clerk, the date of hearing, and the person by whom such appeal was formally presented at the hearing. The Board shall record in writing the reasons for its actions and the final disposition of each and every appeal.

- (6) All of the foregoing shall be a matter of public record. Any plan, drawing or other data on which the Board has based its decision, shall be endorsed thereon by the Board.
- B. Before taking action on any appeal, the Board shall hold a public hearing.
- C. At any hearing a party may appear in person or by agent or attorney. Hearings shall not be continued to other times except for good cause.
- D. The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- E. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman.
- F. An approval granted by the Board under the provisions of this article shall expire if a building permit is not obtained within six months of the date on which the approval is granted.
- G. If the Board denies an appeal regarding certain buildings or premises, a second appeal of a similar nature shall not be brought before the Board within one year from the date of the denial by the Board of the first appeal, unless, in the opinion of a majority of the Board, substantial new evidence has been brought forward, or unless the Board finds that an error or mistake of law or misunderstanding of facts has been made.
- H. The Board shall provide by rule, which rule shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Board upon good cause shown.
- I. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- J. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of facts, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the applicant, his representative or agent, the Planning Board, and the municipal officers within seven (7) days of the Board's decision.
- K. The Board shall render a decision on each appeal within thirty (30) days following the public hearing on such appeal unless the Board and the applicant mutually agree to an extension of time.
- L. An appeal may be taken, within forty-five (45) days after the decision is rendered, by any party to Superior Court from any order, relief or denial in accordance with Maine law.

**Section 4. Recording**

Whenever the Board of Appeals grants a variance under this Article, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form and shall be recorded by the applicant in the local registry of deeds within ninety (90) days of final approval of the variance, or the variance shall be invalid. No rights may accrue to the variance recipient or his heirs, successors or assigns unless and until the recording is made within ninety (90) days.