

**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.

1 B. Variance Appeals

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3 (1) To hear and decide applications requesting such variance from the terms of this ordinance  
4 as will not be contrary to the public interest where, owing to special conditions, a literal  
5 enforcement of the provisions of this Ordinance would result in undue hardship. Except  
6 as provided in Section 2.F.(2)(c) of Article 8, use variances may not be granted. A  
7 variance may include such conditions and safeguards as are appropriate under this  
8 Ordinance. Any variance granted shall be the minimum necessary to relieve the hardship.  
9 The words "undue hardship" as used in this subsection mean:

- 10  
11 (a) That the land in question cannot yield a reasonable return unless a variance is  
12 granted;  
13  
14 (b) That the need for a variance is due to the unique circumstances of the property  
15 and not to the general conditions in the neighborhood;  
16  
17 (c) That the granting of a variance will not alter the essential character of the locality;  
18 and  
19  
20 (d) That the hardship is not the result of action taken by the applicant or a prior  
21 owner.  
22

23 (2) Notwithstanding subsection B.(1) above, for the purpose of reviewing requests for setback  
24 variances for single family dwellings, the term "undue hardship" shall have the following  
25 meaning:

- 26  
27 (a) The need for a variance is due to the unique circumstances of the property and not  
28 to the general conditions in the neighborhood;  
29  
30 (b) The granting of a variance will not alter the essential character of the locality;  
31  
32 (c) The hardship is not the result of action taken by the applicant or a prior owner;  
33  
34 (d) The granting of the variance will not substantially reduce or impair the use of the  
35 abutting property; and  
36  
37 (e) That the granting of a variance is based upon demonstrated need, not  
38 convenience, and no other feasible alternative is available.  
39

40 A variance granted under subsection B.(2) shall be limited to permitting a variance from a  
41 setback requirement for a single family dwelling that is the primary year-round residence  
42 of the petitioner. A variance under this subsection may not exceed 20% of a setback  
43 requirement and may not be granted if the variance would cause the area of the dwelling to  
44 exceed the maximum permissible lot coverage.  
45

46 (3) Disability Variance

47  
48 Notwithstanding subsection B(1) above, the Board of Appeals may grant a variance to a  
49 property owner for the purpose of making that property accessible to a person with a  
50 disability who is living on the property. The Board of Appeals shall restrict any variance

1 granted under this subsection solely to the installation of equipment or the construction of  
2 structures necessary for access to or egress from the property with the disability. The  
3 Board of Appeals may impose conditions on the variance, including limiting the variance  
4 to the duration of the disability or to the time that the person with the disability lives on  
5 the property. For the purposes of this subsection, a disability has the same meaning as a  
6 physical or mental handicap under Title 5, section 4553, of MRSA, and the term  
7 "structures necessary for access to or egress from the property" is defined to include  
8 railing, wall or roof systems necessary for the safety or effectiveness of the structure.  
9

10 Notwithstanding any other provision of this Ordinance to the contrary, and as a necessary  
11 supplement to the above provisions for the granting of disability variances to comply with  
12 the federal Americans with Disabilities Act, any single family dwelling lawfully existing  
13 as of the effective date of this amendment (June 13, 2007), shall be eligible to expand its  
14 footprint by not more than 500 square feet, without regard to the provisions in this  
15 Paragraph (3) limiting such variances to ingress and egress improvements only, upon  
16 application for a disability variance by the owner/occupant provided:  
17

18 (a) the additional footprint and accompanying living area are shown to be the minimum  
19 necessary to accommodate the owner/occupant or a member of his immediate family  
20 residing in the dwelling who suffers from a physical or mental disability as referenced  
21 above, and  
22

23 (b) no part of the addition intrudes into any applicable height or lot coverage restrictions;  
24 provided, further, the variance application shall remain subject to the further  
25 restrictions in subsection 2(C) below. Where it would be unreasonable to require  
26 removal of any improvement made pursuant to the granting of such variance, the  
27 Board of Appeals shall not require it.  
28

29 C. Shoreland Overlay District and Resource Protection District.  
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- 31 (1) Prior to taking action on a variance request for property located within the Shoreland  
32 Overlay District or Resource Protection District, the Board shall apply the following  
33 standards in addition to the variance standards:  
34

35 The proposed structure or use would meet the provisions of Article 8, except for the  
36 specific provisions which has created the nonconformity and from which relief is sought.  
37

38 The applicant's submission to the Town shall include the following evidence in support of  
39 the requested variance:  
40

41 (a) A plot plan showing the location, dimensions and setbacks of all existing and  
42 proposed structures.  
43

44 (b) The location of the Shoreland zone line and/or Resource Protection zone line on a  
45 plot plan.  
46

47 (c) Documentation of conformance to standards of subsection C.(2). below.  
48

- 49 (2) Prior to voting to grant a variance within the Shoreland Overlay and/or Resource  
50 Protection Districts, the Board shall, in addition to determining that the four elements of

1 hardship have been met and that the variance requested is the minimum necessary to  
2 address the hardship, shall also determine that the proposed variance conforms to the  
3 following standards:  
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- 5 (a) will not result in unsafe or unhealthful conditions;
- 6
- 7 (b) will not result in unreasonable erosion or sedimentation;
- 8
- 9 (c) will not result in water pollution;
- 10
- 11 (d) will conserve spawning grounds, fish, aquatic life, bird and other wildlife habitat;
- 12
- 13 (e) will reasonably conserve shoreland vegetation;
- 14
- 15 (f) will reasonably conserve visual points of access to waters as viewed from public  
16 facilities;
- 17
- 18 (g) will reasonably conserve actual points of public access to waters;
- 19
- 20 (h) will reasonably conserve natural beauty; and
- 21
- 22 (i) will reasonably avoid problems associated with flood plain development and use.  
23

- 24 (3) A copy of a request for a variance must be forwarded by the Town to the D.E.P. Commissioner at  
25 least 20 days prior to action by the ZBA. The material submitted must include the application and  
26 all supporting information provided by the applicant. Any comments submitted to the Town, prior  
27 to action by ZBA, must be made part of the record and must be considered by the Town prior to  
28 taking action on the variance request.  
29

30 D. Appeals from Other Administrative Boards  
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32 The Board shall also have the authority to hear and decide on an appellate basis appeals from other  
33 administrative boards if expressly so provided by statute or ordinance. This authority shall include  
34 the power to hear and decide special exception appeals from the Planning Board, determinations  
35 made by the Historic Preservation Commission and site plan appeals from the Site Plan Review  
36 Board, but shall not include review of any action by the Planning Board relative to subdivisions,  
37 which shall be appealable directly to Superior Court.  
38

39 E. Submittal Requirements  
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41 Each application for a variance and each administrative appeal shall be submitted to the Board in  
42 writing accompanied by statements and/or photographs which shall become part of the record of  
43 such application or appeal. Each variance application shall indicate in writing that it has satisfied  
44 the required approval standards and each administrative appellant shall indicate the basis for his  
45 claim that the Code Enforcement Officer has erred in administering or interpreting the ordinance.  
46 In either case, the variance applicant or the appellant shall also indicate in writing that he  
47 understands that it is his burden to prove his case to the Board.  
48

1 F. Board Requirement

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3 In acting upon any variance, the Board shall show, in a written statement filed with its record of  
4 the application or appeal and by a statement in the minutes of the Board, how the relief sought  
5 fulfills the required conditions or how it fails to fulfill such conditions.  
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7 **Section 3. Appeal Procedure**  
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9 A. In all cases a person aggrieved by a decision of the Code Enforcement Officer or other  
10 administrative employee or agency where expressly so provided by statute or ordinance, shall  
11 commence his appeal within thirty (30) days after issuance of a written decision from the Code  
12 Enforcement Officer or such other official. The appeal shall be filed with the Town Clerk on  
13 forms to be approved by the Board, and the aggrieved person shall specifically set forth on said  
14 form the grounds for said appeal. These procedures shall also govern variance applications. In  
15 addition for both appeals and variance applications:  
16

- 17 (1) The notice of appeal shall be on a form approved by the Board and shall cite the decision  
18 being appealed, identify the property involved and state the specific grounds for such  
19 appeal. With any such appeal the appellant shall also list the names and addresses of  
20 record, in the most recent tax listing of the Town, of all property owners within 500 feet of  
21 the property under appeal. The appellant shall, at the time of the filing of the appeal,  
22 deposit with the Town Clerk for the Board a sum not less than fifteen dollars (\$15) toward  
23 the cost of advertising such appeal and shall subsequently pay the cost of such advertising  
24 and any other expense in the determination of the appeal over and above said fifteen  
25 dollars.  
26
- 27 (2) The Town Clerk shall record the date of receipt on the copies of any such appeal and shall  
28 forthwith transmit one copy of the notice of appeal to the Board and keep the other copy  
29 available in the Town Clerk's office for public inspection.  
30
- 31 (3) The Board, within twenty (20) days from filing of an appeal, shall determine a hearing  
32 date and cause to be advertised in a newspaper of general circulation in the Town a notice  
33 of the appeal identifying the property involved, the nature of the appeal, and the time and  
34 place of public hearing on the appeal. The public hearing shall not be held earlier than ten  
35 (10) days after the date of such publication of such notice.  
36
- 37 (4) Within three (3) business days after the date of publication of the public hearing notice,  
38 the Board shall mail by certified mail, return receipt requested, a copy of the notice of  
39 appeal, as published, to each of the property owners whose property physically abuts the  
40 property listed in the appeal. In addition, the Board shall mail the same notices, by first  
41 class mail, to the other property owners whose property is located within 500 feet of the  
42 subject property. Failure of any property owner to receive a notice of public hearing shall  
43 not necessitate another hearing and shall not invalidate any action of the Board.  
44
- 45 (5) The Board shall keep a record of each appeal entertained, noting the date when received  
46 from the Town Clerk, the date of hearing, and the person by whom such appeal was  
47 formally presented at the hearing. The Board shall record in writing the reasons for its  
48 actions and the final disposition of each and every appeal.  
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1 (6) All of the foregoing shall be a matter of public record. Any plan, drawing or other data on  
2 which the Board has based its decision, shall be endorsed thereon by the Board.  
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4 B. Before taking action on any appeal, the Board shall hold a public hearing.  
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6 C. At any hearing a party may appear in person or by agent or attorney. Hearings shall not be  
7 continued to other times except for good cause.  
8

9 D. The Code Enforcement Officer or his designated assistant shall attend all hearings and may present  
10 to the Board all plans, photographs, or other material he deems appropriate for an understanding of  
11 the appeal.

12 E. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed  
13 without interruption. Questions may be asked through the chair. All persons at the hearing shall  
14 abide by the order of the chairman.  
15

16 F. An approval granted by the Board under the provisions of this article shall expire if a building  
17 permit is not obtained within six months of the date on which the approval is granted.  
18

19 G. If the Board denies an appeal regarding certain buildings or premises, a second appeal of a similar  
20 nature shall not be brought before the Board within one year from the date of the denial by the  
21 Board of the first appeal, unless, in the opinion of a majority of the Board, substantial new  
22 evidence has been brought forward, or unless the Board finds that an error or mistake of law or  
23 misunderstanding of facts has been made.  
24

25 H. The Board shall provide by rule, which rule shall be recorded by the secretary, for any matter  
26 relating to the conduct of any hearing, provided that any rule may be waived by the Board upon  
27 good cause shown.  
28

29 I. The Board may receive any oral or documentary evidence but shall provide as a matter of policy  
30 for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have  
31 the right to present his case or defense by oral or documentary evidence, to submit rebuttal  
32 evidence and to conduct such cross-examination as may be required for a full and true disclosure  
33 of the facts.  
34

35 J. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the  
36 proceeding, shall constitute the record. All decisions shall become a part of the record and shall  
37 include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all  
38 the material issues of facts, law or discretion presented and the appropriate order, relief or denial  
39 thereof. Notice of any decision shall be mailed or hand delivered to the applicant, his  
40 representative or agent, the Planning Board, and the municipal officers within seven (7) days of  
41 the Board's decision.  
42

43 K. The Board shall render a decision on each appeal within thirty (30) days following the public  
44 hearing on such appeal unless the Board and the applicant mutually agree to an extension of time.  
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46 L. An appeal may be taken, within forty-five (45) days after the decision is rendered, by any party to  
47 Superior Court from any order, relief or denial in accordance with Maine law.  
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1    **Section 4.       Recording**  
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3    Whenever the Board of Appeals grants a variance under this Article, a certificate indicating the name of  
4    the current property owner, identifying the property by reference to the last recorded deed in its chain of  
5    title, and indicating the fact that a variance, including any conditions on the variance, has been granted and  
6    the date of the granting, shall be prepared in recordable form and shall be recorded by the applicant in the  
7    local registry of deeds within ninety (90) days of final approval of the variance, or the variance shall be  
8    invalid. No rights may accrue to the variance recipient or his heirs, successors or assigns unless and until  
9    the recording is made within ninety (90) days.