

## ***ARTICLE III. APPEALS***

### **SECTION 1. ESTABLISHMENT OF BOARD OF APPEALS**

The Town shall have a Board of Appeals, in accordance with the provisions of Title 30-A, MRSA, Section 2691.

### **SECTION 2. POWERS AND DUTIES**

The Board shall have the following powers:

#### A. Administrative Appeals

To hear and consider appeals in which an aggrieved party alleges that:

1. There was an error or omission in any action taken by the Code Enforcement Officer in the administration or enforcement of this Ordinance; or
2. There was an error or omission by the Planning Board in the administration of this Ordinance.

In appropriate circumstances a case may be remanded back to the Code Enforcement Officer or Planning Board for appropriate action.

#### B. Variance Appeals

To consider variance appeals, within the limitations set forth in this Ordinance.

1. Dimensional variances may be granted only from dimensional requirements including, but not limited to, frontage (including shore frontage), lot area, lot width, structure height, percent of lot coverage, and setback requirements (except waterfront setbacks).
2. Use variances shall not be granted to allow a use otherwise prohibited by this Ordinance.
3. The Board shall not grant a variance unless it finds that both:
  - a. The proposed structure or use would meet the requirements of this Ordinance, except for the specific provision which has created the non-conformity and for which relief is sought; ***and***
  - b. The strict application of the terms of this Ordinance would result in undue hardship, cause a practical difficulty and the following conditions exist:

The term "undue hardship" shall mean all of the following:

- i. That the need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood;
- ii. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- iii. The practical difficulty is not the result of action taken by the applicant or a prior owner;
- iv. No other feasible alternative to a variance is available to the petitioner;
- v. The granting of a variance will not alter the essential character of the locality; and
- vi. The variance does not affect portions of land located within shoreland areas as described in Title 38, Section 435.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

c. To consider variance appeals, outside the limitations set forth above:

This section of the ordinance shall be used at the discretion of the Board of Appeals and is intended to allow the exercise of sound judgment to benefit the community, ensure fair, reasonable and equitable treatment of all applicants and promote the health and safety of the landowner and/or public.

1. Recognition of grandfather conditions. The Board of Appeals may grant variances to accommodate "modest and reasonable" expanded uses of existing or grandfathered conditions or act favorable on other cases related to grandfathered conditions.
  2. The Board may grant variances that promote the health and safety of the landowner or public.
4. The Board of Appeals shall limit any variances granted as strictly as possible to insure maximum conformance with the purposes and provisions of this Ordinance, and in doing so, may impose such conditions on a variance, as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

5. A copy of any such variances granted by the Board of Appeals shall be submitted to the Planning Board within seven (7) days, and if located within the Shoreland District, the Department of Environmental Protection within fourteen (14) days of the decision.
6. Any variance granted must be filed, by the grantee, with the Lincoln County Registry of Deeds within ninety (90) days of such decision by the Board of Appeals.

### **SECTION 3. APPEAL PROCEDURE**

#### **A. Time for Appeal to Board of Appeals**

An administrative or variance appeal to the Board of Appeals shall be filed within sixty (60) days of the date of the decision being appealed.

#### **B. Written Notice**

Such appeal shall be made by filing with the Board of Appeals a written notice which includes:

1. A concise written statement indicating what relief is requested and why it should be granted;
2. A sketch drawn to scale showing lot lines, location of existing buildings and structures, and other physical features of the lot pertinent to the relief requested.

#### **C. Record of Case**

Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision being appealed.

#### **D. Public Hearing**

The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request, unless, for good cause, an interested party requests, and the Board grants, an extension. This public hearing shall be duly noticed, and interested parties and the public shall be given an opportunity to be heard.

#### **E. Decision by Board of Appeals**

1. Quorum. A majority of the full Board of Appeals shall constitute a Quorum for the purpose of deciding an appeal.

2. Majority Vote. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to make a decision.
3. Burden of Proof. The person filing the appeal shall have the burden of proof.
5. Time Frame; Written Decision
  - a. The Board shall decide each appeal within sixty (60) days after the close of the hearing, shall issue a dated written decision on each appeal, and shall send a copy of the decision to the applicant, CEO and the Planning Board.
  - b. All decisions shall become a part of the record, shall include a statement of findings of fact and of conclusions along with the reasons therefore and shall include an appropriate order.

F. Reconsideration

Upon good cause shown to the Board, within twenty (20) days of its decision, the Board of Appeals may vote to reconsider its decision. The Board may conduct an additional hearing to receive additional evidence and testimony. The Board shall then follow the procedures for decisions as set forth above.

G. Appeal to Superior Court

Any party aggrieved by a final decision of the Board of Appeals, or by such Board's other action or refusal to act, may appeal to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days after notice of such final decision, action or refusal to act, or as otherwise provided under rule 80B. Any such appeal may be filed only after all other administrative appeals under this ordinance have been exhausted.