

# Section 11

## I. APPEALS

### 1. POWERS AND DUTIES OF THE BOARD OF APPEALS

The Board of Appeals shall have the following powers:

#### a) **Administrative Appeals**

To hear and decide appeals, where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration of this Ordinance.

Enforcement decisions made by the Code Enforcement Officer are not appealable to the Board of Appeals. An “enforcement decision” includes ‘stop work orders, notices of violation, and other enforcement decisions concerning land use activities undertaken after a permit has been granted or denied.

#### b) **Variance Appeals**

Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

~~NOTE: Enforcement decisions made by the Code Enforcement Officer are not appealable to the Board of Appeals. An “enforcement decision” is any decision concerning land use activities undertaken after a permit has been granted or denied and includes but is not limited to “stop work” orders, notices of violation, and the commencement of a civil action under Rule 80-K, Maine Rules of Civil Procedure.~~

### 2. STANDARD OF REVIEW

#### a) **DE NOVO**

All appeals from a decision, determination, requirement, or failure to act of the Code Enforcement Officer, and decisions of the Planning Board made without conducting a public hearing, shall be conducted “de novo”. The Board of Appeals shall conduct a fact-finding hearing at which it may receive and consider evidence and testimony and oral or written argument in addition to the record of the action taken by the CEO. Based on all the evidence presented, the Board of Appeals shall decide whether the application conforms to the requirements of the Land Use Ordinance, or in the case of a failure to act, whether there has been a failure to act. When acting in a “de novo” capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence and the law, and reaching its own decision.

**b) APPELLATE**

Appeals from decision of the Planning Board, in those instances where the Planning Board has conducted a public hearing, shall be strictly “appellate” proceedings. Such review is limited to the record of the proceedings before the Planning Board, and the Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider oral and written argument. If the Board of Appeals determines that the record of the Planning Board proceedings is not adequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding. The Board of Appeals shall not substitute its judgement for that of the Planning Board on questions of fact. The Board of Appeals may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Land Use Ordinance or the factual findings of the Planning Board are not supported by substantial evidence in the record presented to the Planning Board.