

**TOWN OF MOUNT VERNON**  
**Non-Substantive Housekeeping Items**

**1. Amend Section 6(E)(36)(B)(14) as follows:**

14. A written statement, signed by the Applicant, that certifies that the proposed operation is designed to meet the applicable noise control standards under section 6(E)(11) of this Ordinance and acknowledges the Applicant's obligation to take remedial action in accordance with section ~~6(K)11(K)~~ of this Ordinance if the Code Enforcement Officer determines those standards are not being met.

**II. Repeal Section 11(I) and replace it with Section 11(1) as follows:**

**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.
- b. 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. The Board shall not grant a variance unless it finds that:
  - a. The proposed structure or use would meet the provisions of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and,
  - b. The strict application of the terms of this Ordinance would result in undue hardship. The term “undue hardship” shall mean:
    - i. That the land in question cannot yield a reasonable return unless a variance is granted;
    - ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
    - iii. That the granting of a variance will not alter the essential character of the locality; and
    - iv. That the hardship is not the result of action taken by the applicant or a prior owner.
3. In addition, the Board of Appeals may grant a variance to a setback or lot coverage standard in accordance with 30-A M.R.S. § 4353(4-A) to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses a dwelling. The Board 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 dwelling by the person with disability. The Board may impose conditions on the variance including limiting the variance to the duration of the disability or to the time the person with the disability lives in the dwelling. The term “structure necessary for access to or egress from the dwelling” shall include railing, wall or roof system necessary for the safety of or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to Sections 11(D)(6), 11(J)(2)(D) and 11(J)(2)(E) of this Ordinance.
  - a. A disability as defined in the Americans With Disabilities Act, the Maine Human Rights Act, or the Federal Fair Housing Act; and
  - b. That the structural accommodation being requested is fundamentally necessary in order that the applicant may enjoy a reasonable use of his or her property.
4. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
5. A copy of each variance request in the Shoreland Zone, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the

Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

6. A copy of all variances granted in the Shoreland Zone by the Board of Appeals shall be submitted to the Department of Environmental Protection within seven ( 7 ) days of the decision.

### **III. Repeal Section 11(J) and replace it with Section 11(J) as follows:**

#### **J. APPEAL PROCEDURE**

##### **1. Making an Appeal**

- a. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer, the Planning Board, or other Administrative Authority except for enforcement – related matters as described in this section, above. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- b. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - i. A concise written statement indicating what relief is requested and why it should be granted.
  - ii. 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 sought.
- c. Upon being notified of an appeal, the Code Enforcement Officer, or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- d. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.
- e. The Board of Appeals shall notify, by certified mail, the applicant, all parties to the proceeding ~~below~~, and all abutters of the property involved, including owners of property on the opposite side of the street, at least ten days in advance of the hearing, of the nature

of the appeal and of the time and place of the public hearing. A copy of the variance request in the Shoreland Zone shall be forwarded to the Commissioner of the department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals as outlined in 11(I)(5) above. The owners of property shall be considered to be those against whom taxes are assessed. The Board of Appeals shall notify the Planning Board and the municipal officers of any hearing and shall cause said notice of hearing to be posted at such locations where the Town commonly posts public notice, at least fourteen days prior to the hearing. Failure of any property owner to receive notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.

1-A. **Public Notice of Hearing.** In scheduling a public hearing, the Board of Appeals shall publish notice of the hearing at least ten days in advance in a newspaper of general circulation in the area.

## 2. Decision by Board of Appeals

- a. A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
- b. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms. The board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.
- c. The person filing the appeal shall have the burden of proof.
- d. The Board shall decide all appeals within thirty-five (35) days after the close of the hearing and shall issue a written decision on all appeals. A copy of the decision shall be sent to the person filing the appeal, the Planning Board, municipal officers and any other party to the appeal. For appeals relating to shoreland zones, a copy of the decision shall be mailed or hand delivered to the applicant and to the Department of Environmental Protection within 7 days of the Boards decision.
- e. The Board of Appeals shall state the reason and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision.

## 3. Appeal to Superior Court

An aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.

#### **4. Reconsideration**

In accordance with 30-A M.R.S.A. section 2691 (3) (F) the Board of Appeals may reconsider any decision forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within the forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the of the Board members originally voting on the decision, and a proper notification to the landowner petitioner, planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

#### **IV. Amend Appendix A(C)(16)(2) as follows:**

2. within a State Park, Baxter State Park, a National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, the Appalachian Trail, the Moosehorn National Wildlife refuge, a federally designated wilderness area, a state wilderness area designated by statute, a municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location.

At Protected Locations more than 500 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day. Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, the Moosehorn National Wildlife Refuge, federally designated wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation. Transient living accommodations are generally not considered Protected Locations; however, in certain special situations where it is determined by the municipal entity responsible for review and approval of the application under ~~9.1 Table 4.1~~ Table 4.1 that the health and welfare of the guests or the economic viability of the establishment will be unreasonably impacted, the municipal entity responsible for review and approval of the application under ~~9.1 Table-Table 4.1~~ Table 4.1 may designate certain hotels, motels, campsites and duly licensed campgrounds as protected locations. This term does not include buildings and structures located on leased camp lots, owned by the Applicant used for seasonal purposes.

**V. Amend Appendix A(D) (2.1) as follows:**

1. Measurement Criteria

2.1 Measurement Personnel

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the municipal entity responsible for review and approval of the pending application under ~~9.4~~ Table 4.1.

**VI. Amend Appendix A(D)(3) as follows:**

3. Measurement of Ambient Sound

3.1 Pre-development Ambient Sound

Measurements of the pre-development ambient sound are required only when the Applicant elects to establish the sound level limit in accordance with ~~subsections A(1)(b) and A(1)(e)(ii)(d)~~ Appendix A Section (D)(4.2) for a facility in an area with high ambient sound levels, such as near highways, airports, or pre-existing facilities; or when the Applicant elects to establish that the daytime and nighttime ambient hourly sound levels at representative Protected Locations exceed 45 dBA and 35 dBA, respectively.

- a. Measurements shall be made at representative Protected Locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the facility will operate. If the proposed facility will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the facility will operate.
- b. Measurement periods with particularly high ambient sounds, such as during holiday traffic activity, significant insect activity or high coastline waves, should generally be avoided.
- c. At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one-hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

### 3.2 Post-Facility Ambient Sound

- a. Measurements of the post-facility ambient one-hour equivalent sound levels and, if short duration repetitive sounds are produced by the facility, the maximum sound levels made at nearby Protected Locations and during representative routine operation of the facility that are not greater than the applicable limits of subsection C clearly indicate compliance with those limits.
- b. Compliance with the limits of subsection ~~A(1)(b)~~ Sections 6(E)(11) and 6(E)(34) of this Ordinance and Appendix A Section D(2.4) may also be demonstrated by showing that the post-facility ambient hourly sound level, measured in accordance with the procedures of subsection 3.1 above during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than one decibel, and that the sound from routine operation of the facility is not characterized by either tonal sounds or short duration repetitive sounds.
- c. Compliance with the limits of subsection ~~A(1)(e)(ii)(d)~~ Sections 6(E)(11) and 6(E)(34) of this Ordinance and Appendix A Section D(2.4) may also be demonstrated by showing that the post facility maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection 3.1 above, during routine operation of the facility, does not exceed the pre-development ambient hourly sound level by more than five decibels.
- d. If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the facility in accordance with the procedures described in subsection 4.

**VII. Amend Section 9(D)(1) as follows:**

Design Category		Town/Subdivision/ Private Road	Both	Back Lot Driveway
1	Minimum width (ROW)	66'	<del>30'</del>	<u>30</u>
2	Minimum width of traveled way	18'	<del>12'</del>	<u>12''</u>
3	Minimum grade	.5%		
4	Maximum grade	10%		<u>15%**</u>
5	Maximum grade at intersection		(3% within 50 ft. of intersection)	
6	Minimum angle of intersection		80 degrees**	
7	Width of shoulders (each side)	3'		<u>2'</u>
8	Minimum centerline radius on curves		200'	
9	Minimum tangent length between curves		100'	
10	Base gravel (4" minus) Surface gravel (2" minus)		16"	N/A
11	Bituminous paving (optional)	2" base, 1" surface		
12	Road crown		.25"/1'	
13	Sidewalk width (minimum, where required)		5'	
	base course (gravel)	8"		
	Surface (optional)	2" bituminous hot top		
14	Dead-End or cul-de-sac streets:			
	Width	66'		N/A
	Length not more than	800'		N/A
	Radius of turnaround at enclosed end	65'		N/A
15	Property line radius at intersection (minimum)		10'	
16	Curb radius at intersections (Note curb placement is optional)			
	90-degree intersections	25'		
	Less than 90-degree intersections	30'		
	intersections			

\*\* These standards may be increased/reduced with prior Planning Board approval without the need for a variance.