

BOARD OF APPEALS ORDINANCE
OF THE TOWN OF BROOKLIN, MAINE

Effective Date: 4/6/2024

Certified: David Rowley Date: 4/11/24

Certified: [Signature] Date: 4-11-24

Certified: [Signature] Date: 4/11/24

Select Board

Attest: A True Copy: Heather Candage Date: 4/11/2024
Town Clerk

**BOARD OF APPEALS ORDINANCE
OF THE TOWN OF BROOKLIN, MAINE**

I. AUTHORITY; DESIGNATION; EFFECTIVE DATE

- A. This ordinance is adopted pursuant to Article VIII, Part Second of the Maine Constitution; 30-A M.R.S. §§ 2691 and 3001; and any other enabling statutes.

- B. This ordinance shall be known as the “Board of Appeals Ordinance of the Town of Brooklin, Maine” and may be so cited. This ordinance may also be cited as the “Brooklin Board of Appeals Ordinance.”

- C. This ordinance shall take effect and be in force from the date of its adoption at a town meeting, and shall apply retroactively to January 24th, 2024 notwithstanding 1 M.R.S. § 302.

II. ESTABLISHMENT

The Town of Brooklin hereby reaffirms the establishment of its Board of Appeals, referred to also as the Appeals Board. The members of the Board of Appeals currently serving may continue to do so until the end of the term for which they were appointed without the need to be reappointed or take a new oath or affirmation of office. Any actions which the Board of Appeals has taken prior to the adoption of this ordinance are hereby declared to be the acts of the legally constituted board of appeals of the Town of Brooklin. The Board of Appeals is hereinafter referred to as the “Board”.

III. ORGANIZATION

A. Appointment. Members of the Board shall be appointed by the municipal officers, who shall determine their compensation, and shall be sworn by the municipal clerk or other person authorized to administer oaths or affirmations.

B. Composition; Term. The Board shall consist of three regular members and two alternate members, each a resident of the Town of Brooklin. The term of each regular member and alternate member shall be three years. The terms for regular members shall be staggered such that no more than two terms end in any given year.

C. Vacancy. A vacancy shall occur (1) upon the resignation or death of a member; (2) when a member fails to attend four consecutive regular meetings without a reasonable excuse and the municipal officers remove said member by majority vote, after providing notice and an opportunity for a hearing; or (3) when a member is dismissed for cause pursuant to paragraph III.D, below. When there is a vacancy, the municipal officers shall appoint a person to serve for the unexpired term.

D. Dismissal for Cause. The municipal officers may dismiss a member of the Board for cause before the member's term expires, after providing notice and an opportunity for a hearing.

E. Incompatibility of Office. A member of the Board may not hold an incompatible appointed or elected position with the Town of Brooklin government. Two offices are incompatible if the duties of each are so conflicting that one person holding both offices would not be able to perform the duties of each with undivided loyalty. Without limiting the foregoing, neither a municipal officer nor a spouse of a municipal officer may be a regular or associate member of the Board.

F. Conflicts of Interest.

1. A Board member shall make full disclosure of any interest that may have a bearing on matters before the Board, whether or not such interest is a direct or indirect pecuniary interest as defined in 30-A M.R.S. § 2605(4).

2. Every Board member shall attempt to avoid the appearance of a conflict of interest by disclosure or by abstention.

3. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the Board members, excluding the member who is being challenged.

4. A Board member that is recused for a reason of a conflict of interest may not participate in deliberations of the Board but shall be afforded the same opportunity to participate as any member of the public.

IV. PROCEDURE

A. Officers. The Board shall elect by majority vote a chairperson, vice chairperson, and a secretary from among its regular members. The term of all offices shall be one year, with eligibility for re-election without term limits. Vacancies in any office may be filled at any time by a majority vote of the Board.

B. Quorum. A quorum of the Board consists of two members of the board. A quorum is necessary to conduct an official board meeting and to render a decision. The Board shall act by majority vote of the members present and voting. If a Board member was not present at an earlier proceeding of a matter, that Board member may participate in a later proceeding, so long as that Board member affirms they have reviewed the record of the prior proceedings.

C. Bylaws; Rules of Procedure. The Board may adopt bylaws and rules of procedure for the conduct of meetings and public hearings, and for the transaction of other business. The Board shall file all bylaws and rules of procedure with the municipal clerk.

D. Permanent Record. The secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the municipal clerk's office and may be inspected at reasonable times.

E. Alternate Members. When a regular member is unable to act because of interest, physical incapacity, absence, or any other reason satisfactory to the chairperson, the chairperson shall designate an alternate member to sit in the regular member's place. An alternate member may attend all meetings of the Board, may ask questions or offer comments, and may make and second motions and vote only when designated by the chairperson to sit in for a regular member.

F. Meetings. The chairperson shall call meetings of the Board and shall set the agenda. The chairperson shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. The chairperson shall preside at all meetings and be the official spokesperson of the board. In the absence of the chairperson, the vice chairperson shall preside over meetings of the Board. Notice of meetings shall be given in accordance with the Maine Freedom of Access Act. All meetings shall be open to the public, except executive sessions as provided under the laws of the State of Maine.

G. Meeting Minutes. The Board shall keep minutes of all meetings. Copies of the meeting minutes shall be distributed to all members and made available for public inspection.

H. Appeal Procedure. Unless otherwise expressly provided by ordinance, the following appeal procedure shall apply when the Town of Brooklin has, by ordinance, specified the precise subject matter that may be appealed to the board and the official(s) or body whose action or nonaction may be appealed to the board:

- a. Any person aggrieved by a decision of a Town official or body may appeal such decision to the board within 30 days of the decision by filing an appeal at the office of the municipal clerk.
- b. Enforcement decisions, including but not limited to, notices of violation by the Town Code Enforcement Officer, cannot be appealed to the Board. Notices of "no violation" or a failure of the Town Code Enforcement Officer or Select Board to take enforcement action cannot be appealed to the Board. Upon receipt of an application purporting to make such an appeal, the Board shall meet only to determine there is no jurisdiction and dismiss the appeal. It shall not issue a decision concerning the merits of the appeal.

- c. Appeals from decisions of a Town official or body made without conducting a public hearing are de novo. The Town official or body shall transmit to the board the decision and all documents and other evidence on which the decision was based, which may be considered as evidence in the de novo proceeding. The Board must conduct a public hearing at which all persons have the right to present additional testimony and documentary evidence. The Board has authority to grant or deny a permit or approval or to remand the matter to the Town official or body for further proceedings.
- d. Appeals from decisions of a Town official or body made after conducting a public hearing are purely appellate. The Town official or body shall transmit to the Board the decision and all documents and other evidence comprising the record on which the decision was based. The Board must conduct a public proceeding at which all persons have the right to present legal argument concerning the decision of the Town official or body. The Board may not permit the introduction of new or additional testimonial or documentary evidence. The standard of review is whether the decision of the Town official was arbitrary or capricious, based on error of law, or based on findings of fact not supported by substantial evidence in the record. The Board has authority to sustain or reverse a decision of the Town official or body or to remand the matter to the Town official or body for further proceedings.

I. Public Record. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the Board, and the exhibits, together with all papers and requests filed in the proceeding, constitute the public record. All Board decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision must be mailed or hand delivered to the petitioner, the appellant's representative or agent, the planning board, agency or office and the municipal officers within seven days of the board's decision.

J. Reconsideration. The Board may reconsider any decision in accordance with the provisions of 30-A M.R.S. § 2691(3).

K. Appeals. An appeal of a Board decision may be taken to the Superior Court in accordance with the provisions of 30-A M.R.S. § 2691(3).

V. DUTIES AND POWERS

A. The Board shall perform such duties and exercise such powers as are provided by ordinance and the laws of the State of Maine.

B. The Board may obtain goods and services necessary within the limits of appropriations made for the purpose by the legislative body of the municipality. All funds appropriated for the board shall be expended under the supervision of the municipal officers.

VI. CONSULTING AND REVIEW FEES

A. Any application to the Board of Appeals shall be accompanied by a non-refundable application fee of \$250.00, in addition to such other fees specified by any ordinance.

B. If the Board or the municipal officers determine that the Board requires the assistance of professional services, including without limitation legal assistance, the appellant shall deposit with the Town \$1,000.00, which shall be deposited in an escrow account established with the Town. The Town, at the direction of the municipal officers, may draw from this account to cover any professional fees incurred by the Board in response to an appeal. Appellant may request and the Town shall provide an account of how the fees were spent. If any funds remains after a decision upon an appeal is final, the remaining funds and accrued interest, if any, shall be provided to the appellant within 45 days of the final decision.

C. If the escrow account established is depleted to less than 50% of the original deposit amount, the appeal shall be deemed stayed and the Board shall not take any action until either an additional action on the project, including any additional meetings, until the account has been brought back to the original balance.

D. Upon application or its own initiative, the Select Board may waive this requirement for consulting and review fees.

VII. VALIDITY AND SEVERABILITY

A. The sections and provisions of this ordinance are severable. Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, such declaration shall not affect the validity of any other section or provision of this ordinance. The appellant shall pay any outstanding amount within 45 days of receipt of a bill from the Town.