

Article VII

LAND USE BOARD OF APPEALS

SECTION 1. Appointment and Composition

A. There shall be a Board of Appeals in accordance with the provisions of 30 M.R.S.A. Section 2411, as the same may be amended from time to time.

B. The Board shall consist of five members serving staggered terms of five years, appointed by the Board of Selectmen. The Board of Selectmen may appoint two associate members to serve in the absence of regular members. The Chairman of the Board of Appeals shall designate which associate member shall serve in the stead of the absent member.

C. The Board of Appeals shall elect annually a chairman and secretary from the membership.

SECTION 2. Procedure

A. The Board of Appeals shall conduct its meetings in accordance with the provisions of 30 M.R.S.A., Section 2411, as the same may be amended from time to time.

B. The presence of three members of the Board of Appeals shall constitute a quorum. An appeal may be granted, or a decision of the Code Enforcement Officer may be overruled only upon an affirmative vote of at least three members of the Board of Appeals.

C. No member of the Board of Appeals shall vote on a matter in which he or she has a financial interest. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting shall be decided by a majority vote of the members present, excluding the member about whom the possibility of a conflict of interest is being decided.

D. In all cases, a person aggrieved by a decision of the Code Enforcement Officer shall commence his appeal within 30 days after a decision is made by the Code Enforcement Officer. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

E. Following the filing of an appeal and before taking action on any appeal, the Board of Appeals shall hold a public hearing on the appeal within 30 days. The Board of Appeals shall notify the Code Enforcement Officer, the Planning Board and the Selectmen, at least 20 days in advance, of the time and place of the hearing, and shall publish notice of the hearing at least 10 days in advance, in a newspaper of general circulation in the area.

F. The Board of Appeals shall notify by certified mail the appellant and the owners of all property within 500 feet of the property involved at least 10 days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing.

G. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.

H. At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.

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

J. The Appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

K. Within 20 days of the public hearing, the Board of Appeals shall reach a decision on an appeal and shall then inform the appellant, the Code Enforcement Officer, the Planning Board and the Municipal Officers of its decision and its reasons, in writing, within 7 days of said decision.

L. Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall immediately issue a Building Permit in accordance with the conditions of the approval.

M. Any appeal may be taken from any decision of the Board of Appeals to the Superior Court within thirty days after the decision, as provided by 30 M.R.S.A., Section 2411, as the same may be amended from time to time.

N. The Board of Appeals shall keep records of its proceedings, and such records shall be kept public.

SECTION 3. Powers and Duties

The Board of Appeals shall have the following powers and duties:

A. Administrative Appeals

To affirm, modify, or set aside the action of the Code Enforcement Officer in issuing or denying building or other permits, when it is alleged that there is an error in any order, requirement, decision, or determination in the enforcement of this Ordinance. An administrative appeal shall be taken within thirty days of the date of the decision or action of the Code Enforcement Officer, or within 60 days of the date of application if no action has been taken by the Code Enforcement Officer. The appeal shall be filed at the Office of the Selectmen, who shall notify the Chairman of the Board of Appeals and the Code Enforcement Officer.

B. Variances

To approve, approve with conditions, or disapprove appeals for variances from the strict enforcement of the provisions of this Ordinance only as they relate to the space and bulk

standards of the district regulations and the performance standards of this Ordinance, according to the terms of Section 4 of this Article. A variance shall not be granted to allow a use or an expansion of a use in a district in which the use is prohibited.

SECTION 4. Variances

A. Application for Variance

A. Application for Variance

Application for a variance shall be made to the Code Enforcement Officer on forms provided for that purpose, accompanied by a fee determined by the Board of Selectmen after a public hearing and set forth in a schedule of fees posted at the town office. In addition, the applicant shall be responsible for the costs of advertising and mailing associated with the application, over and above the application fee. The application shall clearly state the location of the property, the relief sought, and the reason(s) for requesting the variance. The application shall include a drawing to approximate scale showing the proposed location of the building or structure and its relationship to the lot's property lines and any adjacent road or right-of-way, including all setbacks and other pertinent dimensions. (Updated March,2021)

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B. Standards

Prior to voting to grant a variance, the Board of Appeals shall review the application and find that the following standards have been met:

1. That literal interpretation of the requirements of his Ordinance will impose an undue hardship on the property owner. The term "undue hardship" shall mean specifically that:

a. The land in question cannot yield a reasonable return unless a variance is granted;

and

b. The need for the variance is due to unique circumstances of the property and not to the

general conditions of the neighborhood; and

c. The hardship is not the result of action taken by the applicant or a prior owner.

2. That the granting of the variance will not alter the essential character of the locality.

3. Any variance granted by the Board of Appeals shall be the minimum variance from the terms of the Ordinance as will relieve the hardship plead.

C. Variance in Shoreland District

All variance requests within the shoreland zone must be submitted to the Board of Environmental Protection at least 20 days before the municipality hears the case. Prior to voting to grant a variance within the mandated shoreland district, the Zoning Board of Appeals shall, in addition, find that the proposed variance meets the following criteria as required by the State Shoreland Zone Model Ordinance:

1. will not result in unsafe or unhealthful conditions.

2. will not result in unreasonable erosion or sedimentation.

3. will not result in water pollution.

4. will not result in unreasonable damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat.

5. will reasonably conserve shoreland vegetation.

6. will reasonably conserve visual points of access to waters as viewed from public facilities.
7. will conserve actual points of public access to waters.
8. will reasonably conserve natural beauty; and
9. will reasonably avoid problems associated with flood plain development and use.

D. Reapplication

If the Board of Appeals shall deny a variance, a second request of a similar nature shall not be brought before the Board within two years from the date of the first request, unless in the opinion of the majority of the Board, substantial new evidence can be brought forward, or unless the Board finds that an error of law or misunderstanding of facts has been made, or unless amendment has been made to this Ordinance which changes the status, circumstances, or conditions of the matter which was appealed.

E. Duration of Variances

Provided all conditions and standards of approval are met, a variance shall be a permanent grant of permission and shall “run with the land”.

F. Recording Variances

Whenever the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form and shall be recorded in the York County Registry of Deeds within 30 days of final approval of the variance or the variance shall be invalid. No rights may accrue to the recipient or his heirs, successors or assigns unless and until the recording is made within 30 days.