

## **Article VI - Appeals and Variances**

### **Section 1 - Appeals from decisions of the Planning Board**

An appeal may be taken within forty-five (45) days from the Planning Board's final decision by any party to Superior Court in accordance with State law on

- a) an application for a building permit within Shoreland
- b) an application for an approved mobile home park
- c) a final Subdivision plan
- d) a final Resource-based Subdivision plan
- e) an application for Site Plan Review.

### **Section 2 - Administrative Appeals from decisions of the Code Enforcement Officer**

An administrative appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer except for enforcement related matters. Such an appeal shall be taken within forty-five (45) days of the date of the decision appealed from, and not otherwise except that the Board upon showing a good cause, may extend the forty-five (45) day requirement.

2.1 When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a "de novo" hearing. At this time, the Board may receive and consider new evidence and testimony, be it oral or written. 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 ordinance and the law and reaching its own decision.

### **Section 3 - Variances**

The Board of Appeals may authorize variances from the strict interpretation of this ordinance. Variances may be granted only under the following conditions:

- (a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- (b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- (c) The Board shall not grant a variance unless it finds that:
  - (i) The proposed structure or use would meet the provisions of the Land Use Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and

(ii) The strict application of the terms of this Ordinance would result in undue hardship. The term “undue hardship” shall mean:

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
- b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. That the granting of a variance will not alter the essential character of the locality; and
- d. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Notwithstanding Section 3, (c)(ii) above, the Board of Appeals may grant a variance 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 the 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 the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

(e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure 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.

(f) If the site is within the Shoreland District, a copy of each variance request, 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 before action by the Board of Appeals. Any comments received from the Commissioner before the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(g) Variances from the requirements of Article III Section 2 - Flood Plain Ordinance shall only be granted pursuant to Sections 2.10 through 2.10.7 therein.

(h) Variances to the provisions of Article III Section 4 - Sign Regulations shall only be granted pursuant to Sections 4.5.3 through 4.5.3.2.1 therein.

## **Section 4 - Procedure before the Appeal Board**

### **4.1 Making an Application for an Appeal or Variance**

Applications for appeals or variances shall be made by filing with the Board of Appeals a written notice of appeal, which includes:

- (a) A concise written statement indicating the relief requested and why the appeal or variance should be granted.
- (b) 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) The fee as set forth in Article 1, Section 9

#### 4.2 Decision by Board of Appeals

- (a) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains, is recused, or otherwise disqualified, shall not be counted in determining whether a quorum exists.
- (b) The person filing the appeal shall have the burden of proof.
- (c) The Board shall decide all administrative appeals and variance appeals within forty-five (45) days after the close of the hearing, and shall issue a written decision on all appeals and variances.
- (d) The Board of Appeals shall state the reasons 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 to be mailed or hand-delivered to the applicant within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers. A copy of any decision on an appeal or variance concerning land within the Shoreland District shall be sent to the Department of Environmental Protection within even (7) days of the Board's decision.

4.3 Appeal to Superior Court. Except as provided by 30-A MRSA, Section 2691(3)(F), any 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 forty-five (45) days from the date of any decision of the Board of Appeals.

4.4 Reconsideration. In accordance with 30-A MRSA, Section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision shall be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration shall occur and be completed within 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 Board members originally voting on the decision, and 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.

Appeal of a reconsidered decision to Superior Court shall be made within fifteen (15) days after the decision on reconsideration.

*[this Article added May 17, 2008]*

