

ARTICLE 17 – BOARD OF APPEALS**17.1 ESTABLISHMENT AND ORGANIZATION**

There shall be a Board of Appeals of five (5) members and two (2) associate members appointed by the Municipal Officers as provided in **Title 30-A, MRSA, §4353**. No municipal officer shall be a member of the Board.

Board of Appeals members shall serve for terms of three (3) years. The terms of the members shall be staggered such that the term of at least one (1) member will expire each year. An associate member may act on the Board in place of any member who may be absent. An associate member may also act in place of any member who is unable to vote due to conflict of interest or for any other reason if the vote of the regular member would cause the number of members present and voting to be fewer than three (3).

The Board shall keep minutes of its proceedings, recording the vote of each member on all matters coming before the Board. The minutes of the Board and all correspondence shall be a public record. Three (3) members of the Board shall constitute a quorum for conducting a meeting and taking action, and the concurring vote of at least three (3) members is necessary to grant any variance request or reverse any action of the Code Enforcement Officer. The Board is governed by the procedures set forth at **Title 30-A, MRSA, §2691** and in this Ordinance. The Board may adopt any procedural rules not in conflict with that Title or this Ordinance, which it deems necessary or proper for the conduct of its business.

17.2. POWERS AND DUTIES

The powers of the Board of Appeals shall be governed by the following:

17.2.1. Administrative Appeals. To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

17.2.2. Variance Appeals. To authorize variances upon appeal, within the limitations set forth in this Ordinance.

17.2.3. Enforcement Appeals. Enforcement actions or decisions of the Code Enforcement Officer relative to violations of this Ordinance are **not** subject to review by the Board of Appeals.

17.3. VARIANCE APPEALS

Variances may be granted only under the following conditions:

17.3.1. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

17.3.2. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

17.3.3. The Board shall not grant a variance unless it finds that:

17.3.3.1. 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

17.3.3.2. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

17.3.3.2.1. That the land in question cannot yield a reasonable return unless a variance is granted;

17.3.3.2.2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

17.3.3.2.3. That the granting of a variance will not alter the essential character of the locality; and

17.3.3.2.4. That the hardship is not the result of action taken by the applicant or a prior owner.

A variance is not justified unless all four elements of an undue hardship are present in the case.

17.3.4. Notwithstanding **Article 17, Section 3.3.2**, 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, and 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.

17.3.5. 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.

17.3.6. A copy of each variance request that involves the Shoreland Management Area, 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 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.

17.3.7. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering all possible effects including shoreland management and flood hazard management, to afford relief.

17.3.8. A financial hardship shall not constitute grounds for granting a variance.

17.4. ADMINISTRATIVE APPEALS

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 evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence that was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings is inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding. The Planning Board will not consider any new evidence; but instead must review only the evidence submitted during the review process.

17.5. FLOODPLAIN MANAGEMENT VARIANCES

In addition to the provisions above, the following shall also apply in cases involving requests for variances from the requirements of this Ordinance that relate to floodplain management.

17.5.1. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

17.5.2. Variances shall be granted only upon:

17.5.2.1. a showing of good and sufficient cause; and

17.5.2.2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

17.5.2.3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,

17.5.2.4. a determination that failure to grant the variance would result in “undue hardship”, as in **Article 17.3.3.2** above.

17.5.3. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

17.5.3.1. other criteria of **Article 17.3, 17.4, and Article 10.6.11**, are met; and,

17.5.3.2. the structure or other development is protected by methods that minimize flood damages during base flood and create no additional threats to public safety.

17.5.4. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, upon a determination that:

17.5.4.1. The development meets the criteria of **Article 17.3 and 17.4** above; and

17.5.4.2. The proposed repair, reconstruction, rehabilitation or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

17.5.5. Any applicant who meets the criteria of **Article 17.3 and 17.4** above, shall be notified by the Board of Appeals in writing that:

17.5.5.1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

17.5.5.2. such construction below the base flood level increases risks to life and property; and,

17.5.5.3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims that the applicant may have against the municipality that are related to the use of land located in a floodplain.

17.6. APPEAL PROCEDURE

17.6.1. Time Limit. An administrative or variance appeal may be taken to the Board by an aggrieved party from any decision of the Code Enforcement Officer or Planning Board, except for enforcement-related matters as described in **Article 17.2** above. Such appeal shall be taken within thirty (30) days of the actual voting date of the official written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

17.6.2. Written Notice. Applications for appeal shall be made by filing with the Board a written notice of appeal which includes:

17.6.2.1. A concise written statement indicating what relief is requested and why the appeal or variance should be granted; and

17.6.2.2. 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 requested.

17.6.3. Record of Case. Upon receiving an application for of an administrative appeal or a variance, 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 or action being appealed.

17.6.4. Public Hearing.

17.6.4.1. Time Limit. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

17.6.4.2. Notifications. Notice of the date, time and place of hearing shall be placed in newspapers of general circulation in the area at least seven (7) days prior to the hearing. The applicant shall also provide written notice of the appeal to all abutting landowners. The Board of Appeals shall notify the Select Board of the appeal and hearing.

17.6.4.3. Costs to the applicant. Costs of the publication and notifications to abutters shall be borne by the party making the appeal.

17.6.5. Decision by the Board of Appeals

17.6.5.1. Quorum. A majority of the full voting membership of the Board of Appeals shall constitute a quorum for the purpose of deciding an appeal.

17.6.5.2. Procedure. The Chair of the Board shall maintain an orderly procedure. The Board may receive oral and documentary evidence. Any party may be represented by an agent or an attorney. The Code Enforcement Officer or a representative of the Planning Board shall be present and present material as appropriate to understanding of the appeal.

17.6.5.3. Burden of Proof. The person filing the appeal shall have the burden of proof.

17.6.5.4. Action on Appeal. Following the public hearing on an appeal, 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.

17.6.5.5. Time Frame. The Board shall decide all appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision within seven (7) days of the Board's decision.

17.6.5.6. Public Record. Board decisions shall only be made by voting at a public meeting. 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. When the decision involves the Shoreland Management Area, written notice shall also be made to the Department of Environmental Protection 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.

17.6.6. Reconsideration.

In accordance with **30-A MRSA §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 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 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 must be made within fifteen (15) days after

the decision on reconsideration.

17.7. APPEAL TO SUPERIOR COURT

Except as provided by **30-A MRSA §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 (the actual date of the vote) of the Board of Appeals.