

## **An Ordinance Governing the Board of Appeals Town of Searsport, Maine**

### **1. Establishment and Organization**

- A. Pursuant to Article VIII, Part 2, Section I of the Maine Constitution and 30-A M.R.S.A. 2691 3001, 4353, a Board of Appeals is hereby established, which shall consist of five (5) regular members and two (2) alternates.
- B. The Chairperson shall designate an alternate to serve in the place of an absent or disqualified member.
- C. The term of office of all members is three (3) years, serving staggered terms.
- D. Neither a municipal officer nor his/her spouse may be a member of the Board of Appeals.
- E. Members of the Board of Appeals shall be appointed by the Select Board.
- F. When there is a permanent vacancy, the Select Board shall appoint a new member for the remainder of the unexpired term.
- G. A permanent vacancy will exist upon the death, resignation, permanent disability or incompetence, or unexcused absence of a member or alternate from three consecutive meetings. Members of the Board of Appeals may be removed from office by the Select Board for cause upon written charges and after notice and hearing.
- H. A majority of the members of the Board shall elect a chairperson, vice-chairperson from its own membership at the first meeting after an annual town meeting or the first meeting after a vacancy. The Board shall appoint a secretary either from its membership or from the general public. All elections shall be held in a public meeting.
- I. The Chairperson, Vice-Chairperson and Secretary shall serve until the next meeting directly after the next annual town meeting. II. Jurisdiction
- A. In addition to hearing appeals for which it has statutory authority, the Board of Appeals is authorized to hear and decide appeals from an aggrieved party where it is alleged that there is an error in any order, requirement, decision, determination or failure to act by:
  - 1. The Code Enforcement Officer;
  - 2. The Planning Board;
  - 3. A Select Board's decision to suspend, terminate or otherwise discipline a town employee;
  - 4. The Shellfish Committee; and
  - 5. Any other town officer, Committee or Commission with respect to an application for a permit, license or other required approval.
- B. In determining an appeal, the Board may affirm, reverse, or remand in whole or in part or may modify the decision.
- C. The Board may adopt and amend, by a majority vote of its present members, rules of procedure, application forms and certificate forms as it deems necessary for the performance of its functions. Copies of all rules or forms shall be provided to the Select Board, the Town Clerk, the Planning Board and the Code Enforcement Officer; and copies shall be provided to any other concerned persons and entities upon request.
- D. The Board may obtain goods and services as necessary for its proper functions within the limits of funds appropriated for that purpose.
- E. The Board may issue variances as prescribed in Section IV.

### **III. Powers and Duties of the Board of Appeals**

A. In addition to its jurisdictional powers and duties in Section II, the Board and its members shall have the following duties and powers:

1. To become familiar with all town ordinances, applicable state statutes, the current edition of the "Manual for Local Land Use Appeals Boards" of the Maine Municipal Association and this Ordinance.
2. To become familiar with the community's goals, plans, desires and policies as expressed in any and all ordinances or comprehensive plan.
3. To avoid any and all actual or potential conflicts of interest or appearances of impropriety including, but not limited to, relations with appellants/applicants, full or partial ownership in property related to a matter before the Board or bias.
4. A majority of the members of the Board may disallow a member from participating in a determination if a conflict of interest or appearance of impropriety is deemed to exist.

B. The Chairperson shall have the following responsibilities:

1. To perform all duties required by state statute and this Ordinance;
2. To preside at all Board meetings;
3. To rule on issues of evidence, order and procedure (at the sufferance of a majority of the present-members of the Board);
4. Between meetings, to conduct the routine housekeeping business of the Board, subject to review and reconsideration of the Board at its next meeting.
5. To appoint an alternate member to fill the vacancy of an absent member.
6. To take such other actions as are needed for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the members of the Board;

C. The Vice-Chairperson shall have all of the powers and duties of the Chairperson during the Chairperson's absence, disability or disqualification. D. The Secretary shall:

1. Keep minutes of all proceedings and actions taken. The minutes shall, at a minimum, show the following:
  - a. The vote of each member;
  - b. The absence of any member during a vote on any question; and
  - c. The abstention of a member during voting due to a conflict in interest.
2. Arrange all proper and legal notices for hearings and attend to the correspondence of the Board;
3. Keep a complete record of each hearing, the identification of participants, agreements between parties and the Board regarding procedures, the findings of fact and conclusions of law, the decisions of the Board, and the date of the issuance of decisions; and
4. Attend to such other duties as are normally carried out by a secretary.

### **IV. Variances**

The Board of Appeals shall authorize variances upon appeal, within the limitations set forth in this Ordinance.

A. Dimensional variances may be granted from dimensional requirement including frontage, lot area, lot width, height and setback requirements pursuant to 30-A M.R.S.A. 4353 (4-B and 4-C). B.

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

C. The Board shall limit any variances granted as strictly as possible in order to preserve the

terms of the relevant Ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end.

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

1. That the property is not located in whole or in part within any shoreland areas as described in 38 M.R.S.A. 435 (all such variance requests shall be governed by the Shoreland Zoning Ordinance); and

2. The strict application of the terms of the town ordinance would result in an undue hardship. The term "undue hardship" shall mean all of the following:

a. 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 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.

E. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living or regularly visits the property pursuant to 30-A M.R.S.A. 4353(4-C). 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 property by the person with the disability.

## **V. Procedures**

### **A. Making an Appeal**

1. Appeals shall be taken within thirty (30) days of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive or extend the thirty (30) day requirement. Until a final determination is made by the Board of Appeals, no construction, development or other work may begin or continue and all other standing orders and determinations made by town officials shall remain in effect.

2. An application for a variance may be filed directly with the Board of Appeals in accordance with the procedures below.

3. An appeal/application for a variance may be made by filing with the Board a written notice containing the following information:

a. The street address of the property in question;

b. The legal name and address of the appellant/applicant and/or owner of the property and any abutters;

c. The legal name and address of the appellant/applicant for any permit which is the subject of the appeal, if different from the owner;

d. A description of the property including a map (obtainable from the town office) showing lot lines, the location of existing building and other physical features pertinent to a request shall be added.

e. Appellant/applicant's description of what is intended to be done;

f. A statement as to why the appeal/application should be granted;

g. If the appeal challenges the issuance of a permit, a description of the permit in question; and

h. A concise written statement stating what, if any, variance is requested.

4. The Board of Appeals shall notify the appellant, any abutters, the Board of Selectmen, the Planning Board, the Code Enforcement Officer, and/or Shellfish Committee, as appropriate, of the appeal.
5. Upon being notified of an appeal, the Code Enforcement Officer, Planning Board, Shellfish Committee, or ~~Board of Selectmen~~ Select Board shall transmit to the Board of Appeals all the papers specifying the record of the decision which is being appealed.
6. Notice of the date, time, and place of the hearing shall be placed in newspapers of general circulation in the area at least seven (7) days prior to the hearing. Cost of the publication, along with a minimum of \$100 fee paid in advance, is to be paid by the appellant/applicant.
7. Personnel Appeals shall be received in writing from the appealing party, addressed to the "Board of Appeals, c/o Town of Searsport, PO Box 499, Searsport, ME 04974, marked confidential" within 30 days of non-satisfactory remedy detailed in the Town of Searsport's Personnel Policy. The Board will notify the ~~Board of Selectmen~~ Select Board no later than 15 working days after receiving a letter of appeal on a personnel issue.

#### B. Hearings

1. All hearings and meetings shall be open to the public and the Board may not vote or deliberate except in a public meeting/hearing except in executive session. If more than one party has filed an appeal of the same order, decision or determination, the Board may elect to hold a consolidated hearing on such appeals even if the appeals involve different issues or arguments.
2. The Board may enter an executive session, but only pursuant to the requirements of I M.R.S.A. 405.
3. The Board shall hold a public hearing within thirty (30) days of its receipt of an proper and complete appeal/request for variance unless prohibited by the State.
4. The Board may receive any oral or documentary evidence, consistent with the appropriate standard of review, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party with standing shall have the right to present his/her case or defense by oral or documentary evidence, to submit any admissible rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts.
5. The parties and Board members may ask questions through the Chairperson if so ordered.
6. The appellant's case shall be heard first followed by any rebuttals. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the orders of the Chairperson.
7. 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.
8. The Code Enforcement Officer or representative of the Planning Board, Shellfish Committee, or Select Board shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material deemed appropriate for an understanding of the appeal.

9. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. Any costs of transcription shall be paid for by the party or parties who wish to preserve the record in such a manner, in addition to the \$100.00 fee.

### C. Decisions

1. A majority of the members of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall be counted in determining whether a quorum exists.
2. All matters before the Board may only be decided by a majority of the present members. A tie vote shall require the Board to reconsider the voted issue in an effort to reach a decision. Failure to obtain the affirmative votes of a majority for the present members shall be considered to be a rejection of the issue/appeal/application under consideration.
3. The concurring vote of a majority of those present and voting shall be necessary to affirm, reverse, remand or modify any matter on which it is required to pass under this Ordinance.
4. Standards of Review for Appeals
  - a. Limited Appellate Review of Decisions of the Planning Board or Historic Preservation Commission: The Board shall restrict its review to the record developed by the Planning Board or Historic Preservation Commission and may only reverse or modify the decision or failure to act of the Planning Board or Historic Preservation Commission if that decision or failure to act, was clearly contrary to the specific provisions of an applicable ordinance or law, was based upon a misinterpretation of an ordinance or law, was based upon a finding of fact unsupported by substantial evidence in the record or was based on an abuse of discretion.
  - b. All other appeals from all other bodies shall be reviewed de novo.
5. The appellant/applicant shall have the burden of proof.
6. The Board, in reaching its decision shall be guided by applicable state statutes, town ordinances/policies and findings of fact and conclusions of law in prior Board decisions
7. In the case of a reversal, modification or remand, the Board shall make an official interpretation of the law or ordinance to be used by the parties in question.
8. The Board shall decide all appeals within thirty (30) days after hearing, and shall issue a written decision on all appeals.
9. All decisions shall become a part of the record and shall include a statement of findings of facts and conclusions of law as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the appellant, his representative or agent, any abutters, the Select Board, the Code Enforcement Officer, Planning Board, and/or Shellfish Committee, as appropriate, within seven (7) days of the decision date.
10. Any right granted by the Board shall expire if the work or changed involved is not begun within six (6) months or substantially completed within one (1) year of such action. The Board may grant an extension not to exceed one (1) additional year if, prior

to the expiration of the applicable time, the petitioner files a written request with the Board stating the reason for such request.

11. The granting of an appeal or a decision to reverse shall merely authorize the preparation, filing, and processing of an application for any permits or approvals which may be required by the town ordinances. It shall not authorize the appellant/applicant to proceed with the project unless proper permits and approvals are obtained.
12. A copy of all variances affecting shoreland zoning granted by the Board of Appeals shall be submitted to the Dept. of Environmental Protection no later than twenty days before action and within fourteen (14) days of the decision.
13. If the Board grants a variance, 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 of the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local registry of deeds within ninety (90) days of the date of the final written approval of the variance or the variance is void. A variance is not valid until recorded as provided in this section. The date of the final written approval shall be the date state on the written approval.

D. Any aggrieved person who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court within forty-five (45) days of the date of the Board of Appeals' decision.

## **VI. Reconsideration**

The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony. If the Board denies an appeal, a second appeal of similar nature for the same property may not be brought before the Board within one (1) year of the date of denial, unless the Board finds, in its sole judgment, that an error or mistake of the law or a misunderstanding of fact occurred.

## **VII Severability.**

In the event that any section or any portion of this ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be affected to affect the validity of any other section or portion of this ordinance. The provisions of this ordinance are hereby declared to be severable.

## **VIII. Effective Date**

The effective date of this Ordinance is March 7, 2015

Amended at the Town Meeting on March 11, 2023

This is a true and Attested copy by: \_\_\_\_\_  
Eric Glidden, Town Clerk