

CHAPTER 9. APPEALS

SECTION 1. BOARD OF APPEALS

Board of Appeals: There is hereby created a Board of Appeals, which Board shall function as provided by Title 30-A, M.R.S.A., Section 2691. This Board consists of seven members appointed by ~~the Select Board~~ Board of Selectmen. ~~Prior to the date of this ordinance, all members were appointed to a 5-year term and all terms will stay in effect until their expiration. All appointments after the date of this ordinance will be for a 3-year term.~~ ~~The~~ A chairman ~~person~~ and a secretary ~~are~~ will be elected annually by members of this Board. The function of the Board of Appeals is to hear appeals from any decision or failure to act by the Code Enforcement Officer, Plumbing Inspector, or Planning Board with regard to this Land Development Code and to review and ~~take action~~ act on variances.

SECTION 2. APPEALS TO BOARD OF APPEALS

~~A. A.~~ Variance Appeals:

The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of Chapter 2 or Chapters 4-8 of this Land Development Code if the Board of Appeals, based on clear and convincing evidence presented to it by the applicant finds:

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~~I. I.~~ The strict application of the terms of Chapter 2 or Chapters 4-8 would result in undue hardship to the applicant. The term "undue hardship" shall mean:

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

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~~b. 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;

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

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~~d. d.~~ That the hardship is not the result of action taken by the applicant or a prior owner; and

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~~H. The proposed use would meet the following standards:~~

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~~a. Will not result in unsafe or unhealthful conditions.~~

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~~b. Will not result in erosion or sedimentation.~~

- ~~c. Will not result in water pollution.~~
- ~~d. Will not result in damage to spawning grounds, fish, aquatic life, bird, and other wildlife habitat.~~
- ~~e. Will conserve shoreland vegetation.~~
- ~~f. Will conserve visual points of access to waters as viewed from public facilities.~~
- ~~g. Will conserve actual points of public access to waters.~~
- ~~h. Will conserve natural beauty.~~
- ~~i. Will avoid problems associated with flood plain development and use.~~

~~A variance is authorized may be granted only from dimensional requirements including, but not limited to lot width, for lot area, lot coverage, rear, side, height of a structure, and road setback requirements, and shall not be granted to permit a use otherwise prohibited. A variance, however, is not authorized to permit construction of principal structures or to permit expansion, enlargement, or addition of principal structures as prohibited by Chapter 2, Section 2(D) in the Resource Protection, Stream Protection and Shoreland Districts on lots of less than 20,000 square feet. Variances granted from set-back requirements shall be in accordance with Title 30-A, Section 4353(4-B). Upon written consent from an affected abutting landowner, a variance may be allowed to exceed 20% of a set-back requirement, except for minimum setbacks from a wetland or waterbody required within shoreland zones by rules adopted pursuant to Title 38, M.R.S.A., subchapter I, article 2-B. Variances granted from dimensional requirements shall be in accordance with Title 30-A, Section 4353(4-C).~~

~~A copy of all variances granted for the Resource Protection, Stream Protection and Shoreland Districts shall be submitted to the Department of Environmental Protection within 14 days of the decision.~~

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~~II. III. — Variances in designated flood hazard areas as set forth in Chapter 5 shall comply with the following additional standards.~~

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

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~~b. — b. — Variances shall be granted only upon 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 and ordinances; and,~~

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~~c. e.~~ Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

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~~i. i.~~ other criteria of Chapter 5, Section 6 are met; and,

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

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~~e. e.~~ 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, without regard to the procedures set forth in paragraphs -a. through d., above

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Any applicant who meets the criteria of paragraphs a. through e., above shall be notified by the Board of Appeals in writing over the signature of the Board's Chairperson that:
~~f.~~

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~~f. Any applicant who meets the criteria of paragraphs a. through e., above shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:~~

~~i. i. 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;~~

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

~~iii. iii. 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 claims the applicant may have against the municipality that are related to the use of land located in a floodplain.~~

~~g. The Board of Appeals shall submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.~~

III. Timing and Content of Application

~~a. All variance application shall be in writing and shall be received by the Town Clerk.~~

~~b. The application along with supporting documents shall clearly state the basis and need for the variance.~~

~~The Board of Appeals shall hold an initial hearing open to the public within forty-five (45) days of the receipt of a variance application unless this time period is extended by written agreement of both parties. All subsequent hearings shall be conducted within fourteen (14) days of each other.~~

~~c.~~

~~d. The Board of Appeals shall issue a written decision on the variance within fourteen (14) days after the close of the final hearing. The written decision shall be prepared by the chairperson and approved by the Board of Appeals members at an in-person meeting.~~

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IV. ~~IV.~~ Notification

Public notice shall be given in a newspaper of general circulation for the hearing scheduled by the Appeals Board fourteen (14) days prior to the hearing, and the abutting landowners shall be notified by certified mail, return receipt, with the applicant to be responsible for all costs of the mailing and the public notice.

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a. A copy of each request for a variance with respect to property in a Shoreland or Resource Protection District shall be forwarded by the Town Clerk to the DEP at least twenty (20) days prior to action by the Board of Appeals, pursuant to the State Shoreland Zoning Law, 38 M.R.S.A. 438-A(6).

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b. A copy of all variances granted for the Resource Protection, Stream Protection and Shoreland Districts shall be submitted to the Department of Environmental Protection within 14 days of the decision.

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c. The Board of Appeals shall submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

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V. Appeals to Superior Court: An appeal may be taken within forty-five (45) days after any decision is rendered by the Board of Appeals by any party, including the Planning Board or Code Enforcement Officer, to Superior Court in accordance with State Law.

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B. B. ~~Administrative Appeals (Land Use Ordinance, Phosphorus Control Ordinance, Floodplain Management Ordinance)~~

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-The Board of Appeals may, upon written application of an aggrieved person, and/or the landowner, after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of Chapter 2 ~~or Chapters 4-8~~ of this Land Development Code. Such hearings will be held according to State laws.

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I. I. Timing and Content of Application:

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a. a. Any application for an appeal shall be in writing and shall be received by the Town Clerk within thirty (30) days after the date of the determination being appealed.

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~~b. — b. —~~ The application shall clearly state the basis for the appeal and the specific findings of fact or conclusions of law being appealed. ~~— No party will be allowed to submit any written documents within three (3) business days of a scheduled hearing.~~

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~~c. — e. —~~ The Board of Appeals shall hold an initial hearing open to the public within ~~forty-five (45) days of receipt of an administrative appeals application unless this time period is extended by written agreement of both parties. All subsequent hearings shall be conducted within fourteen (14) days of each other. A copy of each request for a variance with respect to property in a Shoreland or Resource Protection District shall be forwarded by the Town Clerk to the DEP at least twenty (20) days prior to action by the Board of Appeals, pursuant to the State Shoreland Zoning Law, 38 M.R.S.A. 438-A(6).~~

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~~d. The Board of Appeals shall issue a written decision on the variance within fourteen (14) days after the close of the final hearing. The written decision shall be prepared by the chairperson and approved by the Board of Appeals members at an in-person meeting.~~

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~~II. H. —~~ Notice of Appeal, Record on Appeal:

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~~a. — a. —~~ When an application for an appeal is filed, the Town Clerk shall immediately notify the Planning Board or Code Enforcement Officer, as appropriate, and shall inform them or him of the date, time, and place of the hearing on the appeal.

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~~b. — b. —~~ The Planning Board or Code Enforcement Officer, as appropriate, shall immediately forward to the Board of Appeals the record of the proceeding on the original application. ~~—~~ The record shall clearly state the basis for the determination being appealed, including findings of fact and conclusions of law supporting the determination.

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~~c. — e. —~~ Any Planning Board member or members and/or the Code Enforcement Officer, as appropriate, shall be permitted to appear and to be heard at the hearing regarding the determination being appealed and the basis for it.

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~~III. — III. —~~ Notification

Public notice shall be given in a newspaper of general circulation for the hearing scheduled by the Appeals Board ~~fourteen (14) days prior to the hearing~~, and the abutting landowners

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shall be notified by certified mail, return receipt, with the applicant to be responsible for all costs of the mailing and the public notice.

~~IV.~~ ~~IV.~~—Scope of Review:

~~When reviewing a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing and when reviewing a decision of the Planning Board the Board of Appeals shall hold an appellate hearing.~~

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The Board of Appeals may reverse the determination of the Planning Board or the Code Enforcement Officer if it determines that either:

~~a.~~ ~~a.~~—Any finding of fact is unsupported by substantial evidence and/or;

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~~b.~~ ~~b.~~—Any conclusion of law is clearly erroneous.

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~~V.~~ ~~V.~~—Remand:

In the event the Board of Appeals reverses a Planning Board or Code Enforcement Officer decision, the matter will be remanded to the Planning Board or Code Enforcement Officer for proceeding in accordance with the decision of the Board of Appeals unless such reversal is appealed as provided below.

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~~VI.~~ ~~VI.~~—Appeals to Superior Court:

An appeal may be taken within forty-five (45) days after any decision is rendered by the Board of Appeals by any party, including the Planning Board or Code Enforcement Officer, to Superior Court in accordance with State Law.

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~~C. Administrative Appeals—Subdivision Ordinance~~

~~I. Appeals to the Board of Appeals~~

~~a. An application for an appeal to the Planning Board's decision on the final plan under Chapter 3 of this Land Development Code shall be in writing and shall be received by the Town Clerk within thirty (30) days of the decision of the Planning Board.~~

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~~i. The application shall clearly state the basis for the appeal and the specific findings of fact or conclusions of law being appealed.~~

~~b. The Town Clerk shall immediately notify the Planning Board of the appeal and shall inform them of the date, time, and place of the hearing on the appeal.~~

~~c. The Planning Board shall immediately forward to the Board of Appeals the record of the proceeding on the original application. The record shall clearly state the basis for the determination being appealed, including findings of fact and conclusions of law supporting the determination.~~

~~d. Any Planning Board member or members shall be permitted to appear and to be heard at the hearing regarding the determination being appealed and the basis for it.~~

~~e. The Board of Appeals may reverse the decision of the Planning Board on that portion of the original application so affected and remand the complete application to the Planning Board for further action in accordance with the decision of the Board of Appeals if it determines that either:~~

~~i. Any finding of fact is unsupported by substantial evidence and/or;~~

~~ii. Any conclusion of law is *clearly* erroneous.~~

~~II. Appeals to Superior Court~~

~~An appeal may be taken within forty five (45) days after any decision is rendered by the Board of Appeals by any party, including the Planning Board, to Superior Court in accordance with State law.~~

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