

Town of Bowdoinham
Land Use Ordinance

ARTICLE 12: APPEALS

A) Appointment and Composition

- 1) The municipal officers shall appoint members of the Board of Appeals in accordance with the requirements of ~~Title 30-A M.R.S.A. Section 2691~~, 30-A M.R.S.A. § 2691.
- 2) The Board shall consist of five members appointed by the municipal officers of the Town of Bowdoinham for five years. The initial appointments shall be set forth in this ordinance in order to ratify the existing appeals board membership.
- 3) The municipal officers may appoint up to three (3) associated members to the Board for five (5) year terms. The Chairperson of the Board of Appeals shall designate which associate at a meeting shall serve in place of any absent member.
- 4) Neither a municipal officer nor his or her spouse may be a member or an associate member of the Board of Appeals.
- 5) Any member of the Board of Appeals may be removed from the Board, for cause, by the municipal officers before expiration of that member's term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges. The term "for cause" shall include failure to attend three (3) consecutive Board meetings or hearings without sufficient justification, or for voting when the member has a conflict of interest.
- 6) When there is a permanent vacancy of a full or associate member, the Secretary of the Board of Appeals shall immediately notify the Town Clerk. The municipal officers shall within sixty (60) days appoint a person to fill the unexpired term.
- 7) The Board of Appeals shall elect annually a chairman and secretary from its membership. In the absence of the Chairperson, the Board shall elect an Acting Chairperson as necessary.
 - a) The Chairperson shall perform all the duties required by law, this ordinance, or rules adopted by the Board of Appeals. The Chairperson shall preside at all meetings of the Board and rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committee found necessary to carry out the business of the Board.
 - b) The Secretary, subject to the direction of the Board of Appeals and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each question. The Secretary shall also arrange proper legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a Secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determination of the Board, and shall prepare a complete record of each hearing including: dates(s), time(s), place(s) of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusion; the decisions of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.

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- c) The Acting Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability, or disqualification.

B) Conflict of Interest

- 1) Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.
- 2) The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (e.g., parents, spouse, grandparents, children, grandchildren) or employer or the employer of any member of the person's immediate family.

C) Powers and Duties

The powers and duties of the Board of Appeals shall be as follows:

1) Administrative Appeals

To hear and decide appeals where it is alleged that there is an error in any requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer, Planning Board, Road Commissioner or Harbormaster in the administration of this Ordinance. The hearing on the appeal shall be considered a public hearing and subject to the public hearing notice requirements of Section G below.

- a) Code Enforcement Officer. The Board of Appeals may hear and decide appeals where it has been alleged that there is an error in any interpretation, determination, requirement or decision made by the Code Enforcement Officer or in any other administrative matter involving the Code Enforcement Officer in the administration of any applicable Land Use Ordinances of the Town of Bowdoinham. Administrative appeals shall not include enforcement decisions by the Code Enforcement Officer or the failure to provide for enforcement. The burden of proof shall be on the Appellant to demonstrate that the Code Enforcement Officer erred. The Board shall not conduct a de novo review but shall act in a purely appellate capacity and shall limit its review to the record evidence that was before the Code Enforcement Officer and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Code Enforcement Officer. The Board of Appeals may reverse the Code Enforcement Officer's action only upon a finding that said action was clearly contrary to applicable provisions of the Ordinance or that the record evidence compels a different conclusion.
- b) Planning Board. The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Planning Board, and to the parties' arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or, if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for

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further proceedings. The Board of Appeals shall reverse the decision of the Planning Board only upon finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.

- c) Road Commissioner. The Board of Appeals may hear and decide appeals where it has been alleged that there is an error in any interpretation, determination, requirement or decision made by the Road Commissioner in the administration of this Land Use Ordinance. The burden of proof shall be on the Appellant to demonstrate that the Road Commissioner erred. The Board shall not conduct a de novo review but shall act in a purely appellate capacity and shall limit its review to the record evidence that was before the Road Commissioner and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Road Commissioner. The Board of Appeals may reverse the Road Commissioner's action only upon a finding that said the action was clearly contrary to applicable provisions of the Ordinance or that the record evidence compels a different conclusion.
- d) Harbormaster Appeals. The Board of Appeals may hear and determine appeals from decisions rendered by the Bowdoinham Harbormaster pursuant to the Harbor and Waterfront Rules and Regulations.

2) Variances

To authorize variances within the limitations set forth in this Ordinance.

- a) Variances may be granted only from the following dimensional requirements in Article 5.D and Article 7.D: frontage, lot area/size, density, lot width, structure height, percentage of coverage, and setback requirements.
 - (i) The Board of Appeals shall not grant a variance from dimensional requirements unless it finds that:
 - (A) the proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (B) the strict application of the terms of this Ordinance to the petitioner and the petitioner's property would cause undue hardship.

The term "undue hardship" as used in this subsection means:

 - (1) the land in question cannot yield a reasonable return unless a variance is granted; and
 - (2) the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - (3) the granting of a variance will not alter the essential character of the locality; and
 - (4) the hardship is not the result of action taken by the applicant or a prior owner.
 - (ii) Disability variance

A disability variance may be granted pursuant to the following:

 - (A) The Board of Appeals may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or

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regularly uses the dwelling. The Board shall restrict any variance granted under this paragraph 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.

- (1) The Board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.
- (B) The board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.
 - (1) The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
 - (2) For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in ~~Title 29-A, section 101, subsection 42~~ 29-A M.R.S.A. § 101(42) with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to ~~Title 29-A, section 521~~ 29-A M.R.S.A. § 521, and owned by the person with the permanent disability.
 - (3) The board may impose conditions on the variance granted pursuant to this subsection.
- (C) For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under ~~Title 5, section 4553-A~~ 5 M.R.S.A. § 4553-A.
- (iii) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance, except as provided for in Article 3, Section D- Non-conforming Uses and/or Article 7, Section E.4.C- Non-conforming Uses.
- (iv) 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 on the variances as it deems necessary.
- (v) In areas subject to the Shoreland Zone:
 - (A) 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 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.

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- (B) A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within seven (7) days of the decision.
- b) In areas subject to Article 8: Floodplain Management:
- (i) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (ii) Variances shall be granted only upon:
 - (A) a showing of good and sufficient cause; and
 - (B) 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
 - (C) a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and
 - (D) a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - (1) that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - (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; and,
 - (3) that the granting of a variance will not alter the essential character of the locality; and
 - (4) that the hardship is not the result of action taken by the applicant or a prior owner.
 - (iii) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
 - (iv) Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - (A) other variance criteria and development standards in Article 8 are met; and,
 - (B) 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.
 - (v) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
 - (A) the development meets the criteria of subsections i through iv above; and
 - (B) 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.

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(vi) Any applicant who meets the criteria of subsections (i) through (v) above shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

(A) 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;

(B) such construction below the base flood level increases risks to life and property; and

(C) 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 the applicant may have against the municipality that are related to the use of land located in a floodplain.

c) If a variance is granted under this section, the Board of Appeals shall prepare a certificate, prepared in a recordable form, 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. The certificate must be recorded by the property owner in the local registry of deeds within thirty (30) days of final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection.

3) Ordinance Interpretation

The Board of Appeals may interpret the provisions of any Town Ordinance which are called into question. An interpretation may be made as part of an appeal or may be at the request of the Board of Selectmen, Planning Board, Code Enforcement Officer, local Plumbing Inspector or Road Commissioner.

4) District Boundary Lines Interpretation

An interpretation of Zone boundaries may be made as part of an appeal hearing or made at the request of the Board of Selectmen, Planning Board, or Code Enforcement Officer.

5) Limitations

The Board of Appeals may not hear appeals for requests for tax abatements or poverty abatements.

D) Meetings

- 1) The annual organization meeting of the Board of Appeals shall be the first regular meeting of each fiscal year.
- 2) The regular meeting of the Board of Appeals shall be pursuant to a schedule adopted by the Board. The Chairperson shall call a meeting of the Board in response to a written request for an administrative or variance appeal by any aggrieved party or property owner, or an interpretation appeal by a town official as provided for above. Such a meeting shall be held within thirty (30)

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days of receipt of a written application and the applicant and abutters, and town officials shall have at least seven (7) days' notice of the meeting date.

- 3) Special meetings of the Board of Appeals may be called by the Chairperson. At least forty-eight (48) hours written notice of the time, place, and business of the meeting shall be given to each member of the Board of Appeals, Board of Selectmen, Town Manager, Planning Board, and Code Enforcement Officer or Local Plumbing Inspector.
- 4) All meetings of the Board of Appeals shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meetings. The Board shall not hold executive sessions except for consultation between the Boards and their legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board of Appeals at a disadvantage.

E) Voting

- 1) A quorum shall consist of three (3) members of the Board of Appeals. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the Chairperson to call a special meeting for a subsequent date. If a member has a conflict of interest, that member shall not be counted by the Board in establishing the quorum for such matter.
- 2) Decisions on any matter before the Board of Appeals shall require the affirmative vote of a majority of the membership at the meeting or hearing but not less than three (3) affirmative votes.
- 3) If the Board of Appeals has associate members, the Chairperson shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from any portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.
- 4) No member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon.

F) Application Procedure

- 1) Any person aggrieved by an action which comes under the jurisdiction of the Board of Appeals must file such application for appeal, in writing on forms provided by the Town within thirty (30) days of the granting or denial of a permit or application. The applicant shall file this appeal at the office of the Town Clerk, setting forth the ground for the appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board of Appeals.
- 2) Any person requesting a variance which comes under the jurisdiction of the Board of Appeals must file an application for a variance, in writing on forms provided by the Town. The application must be filed with the Town Clerk, who, upon receiving the application, shall notify the Chairperson of the Board of Appeals.
- 3) The burden of proof shall be on the applicant.

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- 4) The applicant shall submit ~~eight (8)~~ nine (9) copies of all application materials.

G) Hearings

- 1) The Board of Appeals shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a completed application for an administrative appeal or variance. The thirty (30) day requirement may be extended by mutual agreement between the Board of Appeals and the applicant.
- 2) The Board of Appeals shall cause notice of the date, time, and place of such hearing, the location of the building or lot referenced in the appeal, and the general nature of the question involved, to be given to the applicant, and to be published in a newspaper of general circulation in the municipality at least seven (7) day prior to the hearing. The Board shall also cause notice of the hearing to be given to the owners of abutting property, owners of the property referenced in the appeal (if not the applicants), the Board of Selectmen, the Planning Board, the Code Enforcement Officer, and the Plumbing Inspector (if relevant) at least ten (10) days prior to the date of the hearing.
- 3) The Board of Appeals is authorized to adopt "Rules of Conduct and Procedures for Conducting Public Hearings."

H) Decisions

- 1) Decisions by the Board of Appeals shall be made not later than thirty (30) days from the date of the final hearing on the appeal.
- 2) The final decision on any matter before the Board of Appeals shall be made by written order signed by the Chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the materials issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- 3) Notice of any decision shall be sent by certified mail or hand delivered to the applicant, his or her representative or agent, the Planning Board, the Code Enforcement Officer, and the ~~Select Board~~ Board of Selectmen within seven (7) days of the decision.
- 4) Decisions of the Board of Appeals shall be filed in the office of the Town Clerk and shall be made a public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

I) Reconsiderations

- 1) The Board of Appeals may reconsider any decision reached under this Section within forty-five (45) days of its prior decision of its own accord, or upon the request of an aggrieved party. A request to the Board to reconsider must be filed within ten (10) days of the decision to be reconsidered. A reconsideration vote and the action taken on that reconsideration must be completed within forty-five (45) days of the date of the vote on the original decision.

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2) Reconsideration should be for one of the following reasons:

- a) the record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
- b) the Board of Appeals misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction; or
- c) if the Board of Appeals shall deny an appeal, a second appeal of a similar nature shall not be brought before the Board within one (1) year from the date of denial by the Board of the first appeal, unless it is the opinion of a majority of the Board that an error, mistake or misunderstanding of facts has occurred.

~~3) If the Board shall deny an appeal, a second appeal of a similar nature shall not be brought before the Board within one year from the date of denial by the Board of the first appeal, unless it is the opinion of a majority of the Board that an error, mistake or misunderstanding of facts has occurred.~~

Commented [LR1]: I do not recommend that this change be adopted and would suggest the original language be retained. The suggested revisions imply that the language about not allowing a similar appeal within a year belongs in the reconsideration section. It does not. Under Maine statute, reconsiderations must be requested and heard within 45 days of the original decision, whereas the language at issue here precludes similar appeals within a year. They are different concepts and should remain in separate sections.

J) Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may 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.

"Attest: A true copy of an ordinance entitled Land Use Ordinance, as certified to me by the municipal officer of the Town of Bowdoinham, Maine, adopted by Town Meeting on the 10th day of June 2009 and amended by town meeting on the 9th day of June 2010, on the 15th day of June 2011, on the 13th day of June 2012, on the 12th day of June 2013, on the 11th day of June 2014, on the 10th day of June 2015, on the 15th day of June 2016, on the 14th day of June 2017, on the 13th day of June 2018, on the 12th day of June 2019, on the 14th day of July 2020, on the 9th day of June 2021, on the 15th day of June 2022, 14th day of June 2023, and on the 11th day of June 2025."

Tina Magno, Bowdoinham, Town Clerk

