

Board of Appeals Ordinance

Town of Beddington, Maine

I. Establishment

There is hereby established a board of appeals pursuant to 30-m.R.S.A. § 2691.

Section 2. Appointment

2.1 Members of the Board of Appeals shall be appointed by the Municipal officers, who shall determine their compensation, and be sworn in by the municipal clerk or other person authorized to administer oaths.

2.2 The board shall consist of three (3) members and one (1) alternate member.

2.3 The term of each member upon the boards initiation shall be for two years after which the terms shall be for 1, 2 or 3 years. Alternates shall be appointed for 3 years.

2.4 When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member fails to attend four (4) consecutive regular meetings without a reasonable excuse, or when a member ceases to be a voting resident of the town. The municipal officers may remove members of the Board of Appeals by majority vote, for cause, after notice and hearing.

2.5 Neither a municipal officer nor his or her spouse may serve as a member or alternate member of the Board of Appeals.

Section 3. Organization, Rules and Procedures

3.1 The Board shall elect a chairperson and a secretary from among its full voting members and create and fill such other offices as it may determine. The term of all offices shall be one (1) year with eligibility for re-election.

3.2 When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson shall designate an alternate member to sit in his or her place.

3.3 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 of the members, except the member who is being challenged.

3.4 An alternate member may attend all meetings of the Board and participate in its proceedings, but may vote only when he or she had been designated by the chairperson to sit for a member.

3.5 The chairperson shall call one regular meeting each month, provided there is business to conduct.

3.6 No meeting of the Board of shall be held without a quorum consisting of ~~three (3)~~ two (2) members or alternate members authorized to vote. No action shall be taken by the Board without at least ~~three (3)~~ two (2) concurring votes on the issue before the Board.

Section 4. Duties and Powers

4.1 The Board of Appeals shall adopt bylaws governing board functions.

4.2. The Board of Appeals may adopt rules and procedures for the transaction of business and the secretary shall keep a record of its resolution, transactions, correspondence, findings, and determinations.

4.3 The Board of Appeals shall file all bylaws, rules and procedures and subsequent revisions with the municipal clerk. Copies shall be provided to the municipal officers for their information.

4.4 The Board of Appeals shall perform such duties and exercise such powers as are provide by ordinance and the laws of the State of Maine.

4.5 The Board of Appeals may obtain goods and services necessary to its proper functions within the limits of appropriations made for the purpose.

Section 5. Severability Clause

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

Section 6. Provision to Re-establish an Improperly Created Board of Appeals

I. Establishment: Re-establishment. The town of Beddington hereby establishes a Board of Appeals. The Board, which has been acting as a Board of Appeals is here by re-established as the Appeals Board. The actions that it has taken prior to the adoption of this ordinance are hereby declared to be the acts of the legally constituted Board of Appeals of the Town of Beddington.

II. Powers and Duties of the Board of Appeals

A. The Board of Appeals shall have the following powers:

1. Administrative Review. To hear and decide appeals where it is alleged there is an error in any administrative decision, order, requirement or determination made by the Code Enforcement Officer or Planning Board. Following such a hearing, the Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only upon finding that the decision is clearly contrary to the specific provision of the ordinance.

2. Variances. To authorize variance in specific cases but only within the limitations set forth in this ordinance.

3. Interpretations of Ordinances.

III. Variances

A. Variances may be permittee only under the following conditions:

1. Variances are obtainable only for height, minimum lot size, structure size, setbacks, and open space requirements.

2. Variances cannot, under circumstances, be obtainable for establishment of any uses otherwise prohibited.

3. The board shall not grant a variance unless it finds that all the following Criteria are met:

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 the general conditions of 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 an action taken by the applicant or a prior owner. Such hardship may be found by the Board of Appeals where the Land Use Ordinance, as applied to the applicant's property, substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put. Mere inconvenience to the property owner shall not satisfy this requirement. Neither financial hardship alone or pleading that a greater profit may be realized from the applicant's property were a variance granted shall be sufficient evidence of necessary hardship.

4. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the Ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end.

5. The board of Appeals is also authorize to hear and decide requests for disability variances a provided in 30-A M.R.S.A. § 4353 (4-A).

IV. Appeals Procedure

A. making an Appeal

1. An administrative appeal may be taken to the Board of Appeals by an aggrieved person from any administrative decision of the Code Enforcement Officer or Planning Board. Such 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 the thirty (30) day requirement.

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

3. Such an appeal shall be made by filing with the Board of Appeals in a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:

a. A sketch drawn to scale of 1" = 100' showing lot lines, location of existing building and other physical features pertinent to the variance request.

b. A concise written statement stating what variance is requested.

4. The Board of Appeals shall notify the Board of Selectmen, Planning Board, Code Enforcement Officer, and applicant of the appeal.

5. Upon being notified of appeal, the Code Enforcement Officer or Planning Board shall transmit to the Board of Appeals all the papers specifying the record of the decision appealed from.

6. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal application. 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, with a minimum of \$50 paid in advance, to be borne as follows:

a. If the appeal is made by an abutter of the project under review, or any other member of the public, cost of the publication of the notice shall be borne by the person(s) making the appeal.

b. If the appeal is made by the applicant of the project under review, that applicant shall bear the cost of publication of the notice.

B. Hearings

1. The Board may receive any oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present their case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross examination as may be required for a full and true disclosure of the facts.

2. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

3. At any hearing a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

4. The Code Enforcement Officer or representative of the Planning Board shall attend all hearings and may present to the Board of appeals all plans. Photographs, or other material he deems appropriate for an understanding of the appeal.

5. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

C. Decision of the Board of Appeals

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 not be counted in determining whether a quorum exists.

2. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

3. The person filing the appeal shall have the burden of proof.

4. The Board shall decide all appeals within thirty-five (35) days after hearing, and shall issue a written decision on all appeals.

5. All decision 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 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 petitioner, his representative or agent, the Code Enforcement Officer, Planning Board, and Selectmen within seven (7) days of the decision date.

6. Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer or the Planning Board shall promptly issue a permit in accordance with the conditions of approval.

7. A copy of all variances effecting shoreland zoning granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

D. Appeal to Superior Court

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.

V. Reconsideration

A. 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.

VI. Stay of Proceedings

a. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

VII. Effective Date

A. The effective date of this Ordinance is April 5, 2005.