

**BOARD OF APPEALS ORDINANCE
OF THE
TOWN OF RICHMOND, MAINE**

Article 1. General

1.1 Short Title

This Ordinance shall be known and may be cited as the "Board of Appeals Ordinance" and will be referred to herein as this Ordinance.

1.2 Purpose

The purpose of this Ordinance is to establish the Board of Appeals, define its authority and responsibilities, establish its organizational characteristics and set forth procedures for the conduct of its business.

Article 2. Establishment

2.1 Board of Appeals

The Town of Richmond hereby establishes a Board of Appeals in accordance with 30-A MRSA § 2691. The Board of Appeals existing at the time of adoption of this Ordinance shall continue to serve as the Board of Appeals.

2.2 Composition of the Board

The Board of Appeals shall consist of five (5) members and up to two (2) alternate members appointed by the municipal officers. The Board shall consist of residents of the Town of Richmond. Municipal officers or their spouses shall not be eligible to be members of the Board of Appeals.

2.3 Term of Office

The term of each member shall be three (3) years with members serving staggered terms.

2.4 Vacancies

When a permanent vacancy exists on the Board due to the death, resignation, or removal of a member, the municipal officers shall appoint a replacement member within sixth (60) days to serve out the remainder of the unexpired term.

2.5 Removal for Cause

The municipal officers may remove a member of the Board of Appeals from that office prior to the expiration of his/her term after notice and hearing upon a finding, by majority vote, that the member has been derelict in the performance of his/her duties as a member of the Board or that the member has voted on an item in which he/she had a conflict of interest.

A member shall be considered to be derelict if the member has been absent, without excuse, from more than fifty (50) percent of the regular meetings in any calendar quarter.

Article 3. Organization and Rules

3.1 Officers

The Board shall elect annually a Chairperson, Acting Chairperson, and Secretary from its membership. The term of office shall be one (1) year with eligibility for reelection.

3.2 Duties

CHAIRPERSON. The Chairperson shall call meetings of the Board as required. The Chairperson shall also call meetings of the Board when requested to do so by the majority of the members or by the municipal officers. The Chairperson shall be responsible for the conduct of the Board's meetings and shall preside at the meetings and public hearings unless excused by formal vote of the Board. The Chairperson shall be the official spokesman for the Board.

The Chairperson shall perform all duties required by law and this Ordinance and preside at all meetings of the Board. The Chairperson shall 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 committees found necessary to carry out the business of the Board. The Chairperson shall designate an alternative member as a voting member in the absence of a voting member.

ACTING CHAIRPERSON. 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.

SECRETARY. The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote,

indicating such fact. The Secretary shall also arrange proper and 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 determinations of the Board, and shall prepare a complete record of each hearing, including: date(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 conclusions; the decision of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.

3.3 Rules of Conduct

The business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and Roberts' Rules of Order.

The Board may adopt additional rules to govern the conduct of its meetings and public hearings. Such rules shall be adopted or amended only by formal vote of the Board after a public hearing on the proposal. Any rules adopted by the Board shall be in writing and shall be available to applicants and the public.

Article 4. Conflict of Interest

4.1 Conflict Defined

The "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 (grandfather, father, wife, son, grandson, e.g.) or to his employer or the employer of any member of the person's immediate family.

4.2 Disqualification of a Member

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.

Article 5. Powers and Limitations

5.1 Powers

The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party of a decision listed in Section 5.1(3) below or upon a written request for a variance in Section 5.1(2) below:

1. The Board may interpret the provisions of any applicable Town ordinance which are called into question provided that no other appeal process is established.
2. The Board may grant one of the following types of variance from the provisions of the Comprehensive Land Use Code or Minimum Lot Size Ordinance only where strict application of the Ordinance, or a provision thereof, harms the petitioner and his property.

A. **Undue Hardship Variance.** A variance may be granted by the Board for "undue hardship" which shall be interpreted only in strict compliance with all of the following criteria and with the criteria of Title 30-A M.R.S.A. §4353:

1. That the land in question cannot yield a reasonable return unless a variance is granted.
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.
3. That the granting of a variance will not alter the essential condition of the locality.
4. That the hardship is not the result of action taken by the applicant or a prior owner.

B. **Disability Variance.** The Board 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 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 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. For the purposes of this subsection, a disability has the same

meaning as a physical or mental handicap under 5 M.R.S.A. §4553 and the term "structures necessary for access to or egress from the dwelling" is defined to include, but is not limited to, ramps, lifts, railings, walls or roof systems necessary for the safety, accessibility or effectiveness of the dwelling.

C. **Hardship Set-Back Variance for Single-Family Dwellings.**

The Board may grant a set-back variance for a single-family dwelling from a set-back requirement only when strict application of the set-back requirements of this Chapter to the petitioner and the petitioner's property would cause hardship. The term "hardship" as used in this subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of abutting property; and
5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

The Board is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Board may allow for a variance under this subsection to exceed 20% of a set-back requirement, except for minimum set-backs from a wetland or water body required with shoreland zones, if the petitioner has obtained the written consent of an affected abutting landowner.

D. Practical Difficulty Variance from Dimensional Standards.

The Board may grant a variance from the dimensional standards of this Chapter when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
4. No other feasible alternative to a variance is available to the petitioner;
5. The granting of a variance will not unreasonably adversely affect the natural environment; and
6. The property is not located in whole or in part within shoreland areas as described in 38 M.R.S.A. §435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and set-back requirements.

As used in this subsection, "practical difficulty" means the strict application of the ordinance to the property precludes the ability of the petitioner to reasonably pursue and/or expand a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

3. The Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decisions, action or failure to act with respect to any license, permit, variance or other required approval, or any application therefore, including the grant, conditional grant, denial, suspension, or revocation of any such license, permit, variance or other approval (hereinafter a "Decision"):

- a. rendered by the Code Enforcement Officer pursuant to the Comprehensive Land Use Code;
- b. rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to the Building Ordinance or any State statute or regulation, excluding interpretations of and variances from the provisions of the Building Codes adopted by the Town.
- c. rendered by the Selectmen pursuant to the Ordinance for the Regulation and Issuance of Special Amusement Permits of 28 M.R.S.A. §702 (also relating thereto);
- d. rendered by the Selectmen or the Road Commissioner pursuant to the Street Design and Construction Standards Ordinance;
- e. rendered by the Planning Board or the Code Enforcement Officer pursuant to the Ordinance Relating to Flood Hazard Building Permit System and Review Procedures;

***NOTE – At the Special Town Meeting, November 1, 2006, the Land Use Ordinance was amended at Article 8.N.2 to create appeals from the Planning Board to the Board of Appeals.**

5.2 Limitations

The Board of Appeals is not empowered to hear appeals of the action of the Planning Board in granting or withholding approval of applications for development review and subdivisions under the Comprehensive Land Use Code except in the interpretation of the language of the Ordinance as provided for in 5.1.1 or to matters relating to tax assessments and the abatement of taxes.

Article 6. Meetings

1. The regular meeting of the Board shall be held once every month or as necessary.
2. The annual organization meeting of the Board shall be the first regular meeting of the year.
3. Special meetings of the Board 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 each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
4. The Chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three (3) members of the Board or from the

municipal officers which request shall specify the matters to be considered at such special meeting.

5. The order of business at regular meetings of the Board shall be as follows:
 - (a) roll call;
 - (b) designation of voting members;
 - (c) reading and approval of the minutes of the preceding meeting;
 - (d) action on held cases;
 - (e) public hearing (when scheduled);
 - (f) other business;
 - (g) adjournment.
6. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a substantial disadvantage.

Article 7. Voting

1. A quorum shall consist of four (4) members of the Board.
2. An alternate member may vote on an item only when he has been designated by the Chair to be a voting member in the place of a regular member who is absent or otherwise unable to participate in the item under consideration.
3. 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.
4. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of those present and voting unless otherwise specified herein.
5. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.
6. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
7. No regular member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon;

however, where such a member has familiarized himself with such matter by reading the record, he or she shall be qualified to vote.

Article 8. Appeal Procedure

1. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Article 5 must file such application for appeal, in writing on forms provided within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the office of the code Enforcement Officer, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the CEO shall notify the Chairperson of the Board.
2. Each application for appeal shall be accompanied by the appropriate fee. The Board of Selectmen shall establish the schedule of appeals fees from time to time following posting of public notice of the proposed fees and public hearing.

Article 9. Hearings

1. The Board shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a completed appeal application.
2. Following the filing of an appeal, and before taking action on any appeal, the Board of Appeals shall hold a public hearing on the appeal within thirty (30) days. The Board of Appeals shall notify the Building Inspector and the Planning Board at least twenty (20) days in advance of the time and place of the hearing and shall publish notice of the hearing at least ten (10) days in advance in the newspaper of general circulation in the area. The Board of Appeals/Planning board shall also post public notice of the hearing in at least three (3) locations in Town where official public notices are usually posted for at least seven (7) days in advance of the hearing.
3. In appeals involving the use of buildings or premises, the Board of Appeals shall notify by mail the appellant and the owners of all property within five hundred (500) feet of the property involved at least ten (10) days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing.
4. In the case of appeals involving space and bulk regulations or interpretation, the Board of Appeals shall notify by mail the appellant and only the owners of property abutting the property for which an appeal is taken, at least ten (10) days in advance of hearing, of the nature of the appeal and of the time and place of the public hearing thereon. For the purpose of this section,

abutting properties shall include properties directly across a street or water body from the property for which the appeal is made.

5. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.
6. At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.
7. The Building Inspector or his designated assistant 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.
8. The Board shall send a copy of any appeal involving a designated shoreland area together with all supporting information to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to the public hearing.
9. The board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
10. The order of business at a public hearing shall be as follows:
 - a. The Chairperson calls the hearing to order.
 - b. The Chairperson determines whether there is a quorum.
 - c. The Chairperson gives a statement of the case and reads all correspondence and reports received. Any comments received from the Department of Environmental Protection shall be made part of the record.
 - d. The Board determines whether it has jurisdiction over the appeal.
 - e. The board decides whether the applicant has the right to appear before the Board.
 - f. The Board determines which individuals attending the hearing are "interested parties." "Interested parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the hearing. Municipal officers, the Planning Board, and the code Enforcement Officer shall automatically be made parties to the proceeding.

Other persons attending the hearing and federal, state, municipal, and other governmental agencies shall be permitted to make oral or written statements and to submit oral and written questions through the Chair.

- g. The appellant is given the opportunity to present his or her case without interruption.
 - h. The Board and interested parties may ask questions of the appellant through the Chair.
 - i. The interested parties are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
 - j. The appellant may ask questions of the interested parties and Board witnesses directly.
 - k. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
 - l. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
 - m. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.
 - n. Written testimony may be accepted by the Board for seven (7) days after the close of hearing.
11. The Board may waive any of the above rules if good cause is shown.

Article 10. Decisions

- 1. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing.
- 2. The final decision on any matter before the Board 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 a 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.

3. The Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.
4. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
5. 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 or unsupported by substantial evidence in the record.
6. Notice of any decision shall be sent by certified or registered mail or hand delivered to the applicant, his representative or agent, the Planning Board, the Code Enforcement Officer, the municipal officers, and the Department of Environmental Protection for appeals within designated shoreland areas within seven (7) days of the decision.
7. Decisions of the Board shall be immediately filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
8. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of the decisions; however, the Board may extend this time an additional ninety (90) days.

Article 11. Reconsiderations

1. The Board may reconsider any decision. The Board must decide to reconsider any decisions, notify all interested parties and make any change in its original decision within thirty (30) days of its prior decision. A meeting to decide whether to reconsider shall be called by the Chairperson in accordance with Section 5 of this Ordinance. The board may conduct additional hearings and receive additional evidence and testimony.
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 misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction.

Article 12. Recording of Variances

If the Board grants a variance under this section, 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 on 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 final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. * *See Title 30A – M.R.S.A. Section 4353, ¶ 5.*

Article 13. Appeal to Superior Court

A decision of the Board of Appeals may be taken, within forty-five (45) days after the decision is rendered, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure. * *See Title 30A – M.R.S.A. Section 2691, ¶ 3g.*

Article 14. Severability

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.