



TOWN OF WASHINGTON, MAINE

BOARD OF APPEALS ORDINANCE

ADOPTED

29 MARCH, 2013

This is to certify that this ordinance was adopted by a majority of the secret ballot vote on Article 4 at the Annual Town Meeting held March 29, 2013.

True and attested copy:

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Board of Appeals Ordinance

Section 1 Establishment

There is hereby established a board of appeals pursuant to 30-A M.R.S.A. § § 2691 and 3001.

Section 2 Appointment

- 2.1. Members of the board of appeals shall be appointed by the municipal officers, who shall determine their compensation, and shall be sworn by the municipal clerk or other person authorized to administer oaths.
- 2.2. The board shall consist of five (5) regular members and two (2) alternate members.
- 2.3. Regular members shall serve five (5) year staggered terms. Alternate board members shall be appointed for one year terms.
- 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 legal resident of the municipality. The municipal officers may remove members of the board of appeals by majority vote, after providing notice and an opportunity for a 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.
- 2.6 The municipal officers may dismiss a member of the board for cause before the member's term expires.

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 reelection. The board shall elect annually a chairperson and a secretary from its membership
- 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 vote of the members, except the member who is being challenged.
- 3.4. An alternate member may attend all meetings of the board. He/she may ask questions or offer comments and may make and second motions and vote only when he or she has been designated by the chairperson to sit for a member.
- 3.5. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers. A quorum of the board necessary to conduct an official board meeting must consist of at least a majority of the board's members. The chairman shall preside at all meetings of the board and be the official spokesman of the board. No action shall be taken by the board without at least three (3) concurring votes on the issue before the

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board. Notice of regular, special and emergency meetings shall be given in accordance with the Maine Freedom of Access Act.

- 3.6. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the municipal clerk's office and may be inspected at reasonable times.
- 3.7 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 has the right to present the party's case or defense by oral or documentary evidence, and to submit rebuttal evidence.
- 3.8 The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the board, and the exhibits, together with all papers and requests filed in the proceeding, constitute the public record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision must be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within 7 days of the board's decision.
- 3.9 The board may reconsider any decision reached under this section within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The board may conduct additional hearings and receive additional evidence and testimony
- 3.10 Any party may take an appeal, within 45 days of the date of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown. The hearing before the Superior Court must be without a jury.

Section 4 Powers and Duties

This Ordinance grants the Appeals Board to hear an Appeal of the following:

- 4.1 Administrative Appeal: A decision or violation order of the Code Enforcement Officer and/or a decision of the Planning Board. Power and duties with regard to administrative Appeals: To affirm, modify, remand with instructions, or vacate the action of the Town Planning Board or Code Enforcement Officer in issuing or denying building or other permits, or failure of the Planning Board to render a decision, when it is alleged that there is an error in any order, requirement, decision, or determination in the enforcement of this Ordinance. In modifying or vacating the previous decision, the Appeals Board must decide that the previous decision was contrary to the Ordinance or was not substantiated by evidence in the record.
- 4.2 Variance Appeal: Requests for a Variance. Power and duties with regard to Variance: To approve, approve with conditions, or disapprove appeals for variances from the strict

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enforcement of the provisions of this Ordinance only as they relate to the space and bulk standards of the district regulations and the performance standards of this Ordinance, according to the terms of Section 5 of this Article. A variance shall not be granted to allow a use or an expansion of a use in a district in which the use is prohibited.

- 4.3 Interpretation Appeal: Request to interpret provisions of any Ordinance adopted by the Town of Washington. Power and duties with regard to Interpretation Appeal: The Appeals Board may also hear appeals or consider applications under this Ordinance, whenever there is uncertainty as to the meaning and/or intent of any part of this Ordinance. The Appeals Board shall have the power to interpret such part.
- 4.4 Abatement Appeal: To hear and decide all appeals properly taken from the refusal of the Municipal Officers or Assessors to make such property tax abatements as are asked for
- 4.5. The board of appeals shall adopt bylaws governing board functions.
- 4.6. The board of appeals may adopt rules and procedures for transaction of business, and the secretary shall keep a record of its resolutions, transactions, correspondence, findings, and determinations.
- 4.7. The board of appeals shall file all bylaws, rules and procedures and subsequent revisions, and decisions with the municipal clerk.
- 4.8. The board of appeals shall perform such duties and exercise such powers as are provided by ordinance and the laws of the State of Maine.
- 4.9. The board of appeals may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose by the legislative body of the municipality.

Section 5 **Administrative Appeals**

- 5.1 Procedure to be followed for an Administrative Appeal:
 - 5.1.1 Complete the application for an Administrative Appeal (An administrative Appeal must be filed with 30 days of the written decision)
 - 5.1.1.1 Attach a copy of the written action of the planning board and/or the Code Enforcement Officer.
 - 5.1.1.2 Pay required fee (as required by fee structure adopted by the board of selectmen.
 - 5.1.1.3 Submit application and submissions to the Town clerk who shall provide the appellant with a dated receipt.
 - 5.1.1.4 The code enforcement officer shall review the application and forward application to the Appeals Board chair for scheduling
 - 5.1.1.5 The Appeals Board Chair shall schedule a pre hearing conference
 - 5.1.1.6 The Appeals Board shall schedule a public hearing at the pre application meeting
 - 5.1.2 Public Hearing:
 - 5.1.2.1 The Board of Appeals shall conduct a public hearing, which shall be advertised at least ten days in advance in a local newspaper and posted in other places usually used for public notices, at the expense of the applicant. The notice shall contain a clear and concise statement of the appeal to be addressed. The appellant, the selectmen, and the Planning Board shall be notified in writing at least ten days prior to the scheduled hearing. At least ten days before the hearing, the Board, or the Town

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- Clerk on behalf of the Board, shall notify by mail the owners of properties lying within 1,000 feet of the property for which the appeal or application is being made. The owners of properties shall be considered to be those persons against whom taxes are assessed.
- 5.1.2.2 The Code Enforcement Officer, unless prevented by illness or other good cause, shall attend all hearings of the Board.
 - 5.1.2.3 The Board of Appeals shall reach a decision within 10 working days and shall not continue hearings to a future date except for good cause.
 - 5.1.2.4 Written notice of the decision of the Board shall be sent to the Appellant, the Code Enforcement Officer, the Selectmen, and the Planning Board within seven days of its decision.
- 5.2 Any person aggrieved by an action of the Planning Board or Code Enforcement Officer pursuant to this Ordinance may file a request for appeal in writing within 30 days of the granting or denial of approval from the Planning Board or Code Enforcement Officer, or within 60 days of the date of application, if no action has been taken by the Town Planning Board or Code Enforcement Officer.
- 5.2.1. The request of appeal shall state the exact portions of the decision that are being appealed, and the legal grounds for appeal.
 - 5.2.2. The appellant shall file this request for appeal with the Town Clerk, who shall issue a dated receipt and within 5 business days forward the appeal to the Chairman of the Board of Appeals. After receiving the appeal from the Clerk, the Chairman of the Board of Appeals shall, schedule a pre-hearing conference within 14 days and shall timely notify the applicant in writing of the pre-conference, and shall provide the applicant with a copy of the Board of Appeals bylaws.
 - 5.2.3. If such appeal is not made within 30 days, the decision of the Planning Board or Code Enforcement Officer shall be final.
 - 5.2.4. The fee to accompany a completed request for administrative appeals shall be determined according to the fee schedule set by the Board of Selectmen. The applicant shall be required to cover the costs of advertising, postal notification and dissemination of information for the appeals hearing.
 - 5.2.5. No activity may be started under a permit granted herein that is the subject of an appeal before the Washington Board of Appeals.
- 5.3. The Board of Appeals at the pre-hearing conference shall:
- 5.3.1. Set a hearing date within 35 days or other date certain as mutually agreed by all parties; and
 - 5.3.2. Determine the standing, grounds, and process of the hearing per the Appeals Board bylaws.
- 5.4. The Appeals Board shall schedule the hearing, give notice, and set the agenda.
- 5.4.1. The Appeals Board shall cause notice of the date, time and place of said hearing, the location of the proposed activity and the issues raised in the appeal, to be given in writing to the appellant, permit holder and/or applicant and published in a newspaper of general circulation in the Town at least two times. See Section 5.1.2 for Public Hearing procedures.
 - 5.4.2. The Board of Appeals shall also cause written notice by mail or hand delivery of the hearing be given to the appellant, permit holder and/or applicant, the

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- Selectmen, the Planning Board, the Code Enforcement Officer, and all property owners within 1,000 feet of the boundaries of the proposed activity at least 14 days prior to the date of the hearing at the cost of the appellant.
- 5.4.3. Notice shall be posted in such public places as a notice of a Town Meeting.
 - 5.4.4. Upon request, the applicant at the applicant's expense must supply a copy of the request for appeal to any of the owners of properties so mentioned.
 - 5.4.5. The applicant shall be required to cover the costs of advertising, postal notification and dissemination of information for the appeals hearing. Payment of these costs payable to the Town of Washington shall be made prior to the start of the hearing.
- 5.5 Following such hearing, the Board of Appeals shall have the power to interpret this Ordinance and may affirm, modify, remand with instructions, or vacate the decision of the Planning Board or of the Code Enforcement Officer.
- 5.5.1. The appeal shall not be a de novo hearing, except in the case of an appeal from a Stop Work Order or other action by the Code Enforcement Officer.
 - 5.5.2. The Board of Appeals shall render a finding of facts and conclusions in writing to the appellant and/or applicant, Planning Board Chairman, Code Enforcement Officer, and the Selectmen within 30 days of the decision.

Section 6 Variance Appeal

- 6.1 Procedure to be followed for a Variance Appeal:
- 6.1.1 Complete the application for Variance Appeal
 - 6.1.1.1 Attach a written statement outlining the basis for the variance request
 - 6.1.1.2 Pay required fee (as required by fee structure adopted by the board of selectmen.
 - 6.1.1.3 Submit application and written statement to the Town clerk who shall provide the appellant with a dated receipt.
 - 6.1.1.4 The code enforcement officer shall review the application and forward application to the Appeals Board chair for scheduling
 - 6.1.1.5 The Appeals Board Chair shall schedule a pre application meeting
 - 6.1.1.6 The Appeals Board shall schedule a public hearing at the pre hearing conference.
 - 6.1.2 Public Hearing
 - 6.1.2.1 The Board of Appeals shall conduct a public hearing, which shall be advertised at least ten days in advance in a local newspaper and posted in other places usually used for public notices, at the expense of the applicant. The notice shall contain a clear and concise statement of the appeal to be addressed. The appellant, the selectmen, and the Planning Board shall be notified in writing at least ten days prior to the scheduled hearing. At least ten days before the hearing, the Board, or the Town Clerk on behalf of the Board, shall notify by mail the owners of properties lying within 500 feet of the property for which the appeal or application is being made. The owners of properties shall be considered to be those persons against whom taxes are assessed.

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- 6.1.2.2 The Code Enforcement Officer, unless prevented by illness or other good cause, shall attend all hearings of the Board.
- 6.1.2.3 The Board of Appeals shall reach a decision within 10 working days and shall not continue hearings to a future date except for good cause.
- 6.1.2.4 Written notice of the decision of the Board shall be sent to the Appellant, the Code Enforcement Officer, the Selectmen, and the Planning Board within seven days of its decision.

- 6.2.1. Application for a variance shall be made to the Town Clerk on forms provided for that purpose, accompanied by a fee determined according to the fee schedule set by the Board of Selectmen. In addition, the applicant shall be responsible for costs of advertising and mailing associated with the application.
- 6.2.2. The application shall clearly state the location of the property, the relief sought, and the reason(s) for requesting the variance.
- 6.2.3. The application shall include a drawing to approximate scale showing the proposed location of the building or structure and its relationship to the lot's property lines and any adjacent road or right-of-way, including all setbacks and other pertinent dimensions.

6.3 Variance from Dimensional Standards

The Washington Board of Appeals may grant a variance from dimensional standards of lot area, lot coverage, frontage and setback requirements, when strict application of the dimensional standards would cause a practical difficulty and when all of the following conditions exist:

- 6.3.1. The need for a variance is due to unique circumstances of the property and not to the general conditions of the neighborhood; and
- 6.3.2. The granting of the 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; and
- 6.3.3. The practical difficulty is not the result of action taken by the petitioner or a prior owner; and
- 6.3.4. No other feasible alternative is available to the petitioner; and
- 6.3.5. The granting of the variance will not unreasonably adversely affect the natural environment; and
- 6.3.6. The property is not located in whole or in part within the Washington Shoreland Zone.

“Practical Difficulty” means that the strict application of the Ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the land use district in which the property is located and results in significant economic injury to the petitioner.

6.4. Standards in Shoreland Areas

Prior to voting to grant a variance, the Board of Appeals shall review the application and find that the following standards have been met:

- 6.4.1. That a literal interpretation of the requirements of this Ordinance will impose an undue hardship on the property owner. The term “undue hardship” shall mean specifically that:
 - 6.4.1.1 The land in question cannot yield a reasonable return unless a variance is granted; and

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6.4.1.2 The need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood; and

6.4.1.3. The hardship is not the result of action taken by the applicant or a prior owner.

6.4.2. That the granting of the variance will not alter the essential character of the locality.

6.4.3. Any variance granted by the Board of Appeals shall be the minimum variance from the terms of the Ordinance as will relieve the hardship pleaded.

6.5. Additional Criteria in Shoreland Areas

Prior to voting to grant a variance within the mandated shoreland area, the Board of Appeals shall find that the proposed variance meets the following criteria:

6.5.1. Will not result in unsafe or unhealthful conditions;

6.5.2. Will not result in unreasonable erosion or sedimentation;

6.5.3. Will not result in water pollution;

6.5.4. Will not result in unreasonable damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;

6.5.5. Will reasonably conserve shoreland vegetation;

6.5.6. Will reasonably conserve visual points of access to waters as viewed from public facilities;

6.5.7. Will conserve actual points of public access to waters;

6.5.8. Will reasonably conserve natural beauty; and

6.5.9. Will reasonably avoid problems associated with flood plain development and use.

A copy of all variances requests shall be submitted to the Department of Environmental Protection fourteen (14) days prior to the public hearing

6.6. Reapplication

If the Board of Appeals shall deny a variance, a second request of a similar nature shall not be brought before the Board within two years from the date of the first request, unless in the opinion of the majority of the Board, substantial new evidence can be brought forward, or unless the Board finds that an error of law or misunderstanding of facts has been made, or unless amendment has been made to this Ordinance which changes the status, circumstances, or conditions of the matter which was appealed.

6.7. Duration of Variances

Provided all conditions and standards of approval are met, and provided the applicant records the variance at the Knox County Registry of Deeds within 90 days of written approval, as specified in Title 30-A MRSA §4353 (5), a variance shall be a permanent grant of permission and shall “run with the land.”

6.8. Disability Variance

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 regularly uses that 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 but not limiting the variance to the duration

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of the disability or to the time that person with the disability lives in the building. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5 MRSA §4553, and the term “structures necessary for access to or egress from the dwelling” is defined to include the railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

Section 7 Interpretation Appeal:

The Appeals Board may also hear appeals or consider applications under this Ordinance, whenever there is uncertainty as to the meaning and/or intent of any part of this Ordinance. The Appeals Board shall have the power to interpret such part.

7.1 Procedure to be followed for an Interpretation Appeal:

7.1.1 The appellant requesting an interpretation of a word or phrase contained in any of the Municipal Ordinances adopted by the Town of Washington shall complete the application for such an interpretation to the town clerk and pay the fee required by the fee structure adopted by the board of selectmen

7.1.2 The Appeals Board shall provide the appellant with a written interpretation within 30 days of its decision

Section 8 Abatement Appeal:

8.1 Procedure to be followed for an Abatement Appeal:

8.1.1 The appellant shall complete an application for an Abatement Appeal and provide information regarding the property for which the abatement is being filed.

8.1.2 The appellant shall pay the fee required by the fee structure adopted by the board of selectmen

8.2 The board may take such evidence and testimony as it deems necessary and may grant such abatements as it thinks is proper. If the board fails to give written notice of its decision within 60 days of the date of the appeal the appeal is filed, unless the appellant agrees in writing to further delay, the appeal shall be deemed denied. The board's decision may be appealed in accordance with 36 M.R.S.A. § 843

Section 9 Appeal of Board of Appeals Action

An appeal may be taken from any decision of the Board of Appeals to the Superior Court, within 30 days of the date of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown. The hearing before the Superior Court must be without a jury.

Section 10 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 11 Applicability

This ordinance shall apply to the following Town Ordinances:

11.1 Land Use Ordinance

11.2 Mining Ordinance

11.3 Subdivision Ordinance

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- 11.4 Holding Tank Ordinance
- 11.5 Mobile Home Park Ordinance
- 11.6 Floodplain Management Ordinance
- 11.7 Wireless Telecommunications Facilities Ordinance