

ARTICLE 10 ZONING BOARD OF APPEALS

Section 10.01 Establishment - Pursuant to the provisions of MRSA tit. 30 Section 2411 and 4963 (1) a Zoning Board of Appeals is established for the Town of Waterboro to receive, hear, and decide appeals from interpretations of this ordinance and decisions of the officer (see Sections 2.05 and 13.02), the Planning Board and/or the Selectmen (see Sections 11.04 and 13.02), and all requests for variances (see Section 2.08) within the limitations established by MRSA tit. 30 Section 4963 (3).

Section 10.02 Membership and Organization - The board shall consist of seven (7) members appointed by the Selectmen of the Town of Waterboro to serve staggered five (5) year terms. Neither a Selectmen nor his spouse may be a member of the board. A member of the Board may be dismissed for cause by the Selectmen before the expiration of his term. Unexpired terms occasioned by resignation, death, moving from the town or other causes may be filled by the Selectmen. (AMENDED 5-10-88)

The Board shall elect annually a chairman and a secretary from its membership. Any questions 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. (see MRSA tit. s2411 (1) (2) .).

Section 10.03 Procedure - The chairman shall call meetings of the Board to deal with Board business and pending appeals or requests for variances as necessary. The chairman shall also call meetings of the board when requested to do so by a majority of the Selectmen. A quorum of the Board necessary to conduct an official board meeting shall consist of at least three (3) members. Official action may be taken by a majority of those members present and voting on any issue but no motion receiving fewer than two (2) votes shall be deemed passed. The chairman shall preside at all meetings of the Board and be the official spokesman of the Board. The Code Enforcement Officer shall be present at all meetings and hearings of the Board to provide such information and technical assistance as the Board may require.

The secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The secretary shall be responsible for maintaining those records which are required as part of the proceedings which are brought before the Board. All records to be maintained or prepared by the secretary are deemed public, shall be filed in the Municipal Clerk's Office and may be inspected at reasonable times.

The Board may provide by rule, which shall be recorded by the secretary for any matter relating to the conduct of any hearing, provided that any rule may be waived by the chairman upon good cause shown.

The Board may receive any oral and/or documentary evidence pertaining to a matter before it 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 his case or defense by oral and/or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of facts.

The Appellant or their Agent shall be present at his or her hearings pertaining to their Administrative Appeal or Variance Request. Failing to be present can be a reason for denial of Administrative Appeal or Variance Request. (AMENDED 3-12-88)

The transcript of testimony, if any, and exhibits, together with all papers and requests filed in any appeal or variance proceeding, 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. The absence, abstention, or vote of each Board member shall be appended to the record of all appeal proceedings and variance requests. (See MRSA tit. 30 Section 3411 (3))

Section 10.04 Duties – The Board shall receive, hear, and decide all requests for variances (see Section 2.03). A variance shall be granted or denied within sixty (60) days of receipt of a completed request. A variance may be granted by the Board only where strict application of this ordinance, or local subdivision regulations to the applicant’s property would cause undue hardship as defined by state law, 30A MRSA §4504 (3):

10.04.1 Variances for Undue Hardship. Except as provided in section 10.04.2, a variance shall be granted by the Board only where strict application of this ordinance, or local subdivision regulations to the applicant’s property would cause undue hardship as defined by state law, 30-A MRSA §4353.4:

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 prior owner.

10.04.2 Variances from Dimensional Requirements. The Board may grant a variance from the dimensional requirements imposed by this ordinance when strict application of the ordinance to the applicant and the applicant’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; and
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; and
3. The practical difficulty is not the result of action taken by the applicant or a prior owner; and
4. No other feasible alternative to a variance is available to the applicant; and
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 the shoreland area as described in Title 38 MRSA §435.

As used in this subsection 10.04.2, “dimensional standards”: means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection 10.04.2, “practical difficulty” means that the strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the applicant.

10.04.3 Additional Variance Standards.

1. Before a variance may be issued, the Board must determine, in addition to its finding of undue hardship or practical difficulty, that the granting of a variance would not negatively impact the best interest of the community. (AMENDED 3-10-90).
2. Undue hardship shall not be construed to include: self-imposed hardships; an inability to realize as great an economic gain as would be possible if the variance were granted; or a hardship that is not unique to the applicant’s land.
3. A variance, if granted, should necessitate only a slight departure from the stated requirements of an ordinance, usually not exceeding a fifteen (15) percent increase or decrease from the stated requirements.
4. A variance, if granted, must not subvert the intent of the Town’s Comprehensive Plan, this ordinance or local subdivision regulations as manifested in the language of the Plan or the particular provisions from which the variance is sought.
5. A Variance, if granted, must not have a harmful effect on the use of nearby land and structures insofar as that land is being used in conformity with state and local land use ordinances and regulations. The Board in granting a variance may attach appropriate conditions which will avoid harm to adjacent property owners and the public.

Section 10.05 Hearing and Parties - All Board meetings at which appeals or requests for variances are heard, considered and decided are public hearing (see Section 13.07). Notice of a public hearing, shall be given at least seven (7) days prior to the hearing date by general advertisement to the public. At least ten (10) days prior to the date set for the Zoning Board of Appeals hearing on an appeal or a variance application the Zoning Board of Appeals shall cause written notice, by certified mail, of that hearing to (a) all property owners of record whose land abuts the property and the property directly across private way, State, or County Roads for which the variance is requested; (b) the person making the appeal; (c) the Planning Board; (d) the Code Enforcement Officer and (e) any other parties of record to the proceedings. The owners of property shall be considered to be those shown on the tax lists of the Town. Failure of any abutting property owner to receive notice shall not necessitate another hearing or invalidate the action of the Board. The mailed and published notices shall include the following information: (1) The name of the applicant; (2) A brief description of the property involved; (3) A brief statement of the nature and extent of the variance requested; (5) The time and place of the Board’s hearing on the variance. (AMENDED 3-12-88)

All of the general meeting and voting rules outlined in Sections 10.02 and 10.03 shall apply to Board meetings (public hearings) conducted pursuant to this section of the ordinance.

Section 10.06 Findings - The denial of an appeal or of a variance request must include the reasons therefore--the failure to meet the requirements of this ordinance or state statutory requirements (see MRSA tit. 30 Section 4963 (3) or such other reasons as the Board may set forth in its statement of findings and conclusions (see Section 10.03). The sustaining of an appeal or the granting of a variance must also include a statement of findings and conclusions which must specifically indicate all of the requirements of this ordinance as well as state statutory requirements have been met. When conditions are attached to the grant of a variance the need for and the underlying rationale of the attached conditions must be set forth. The denial or the sustaining of an appeal, the denial or the granting of a variance by the Board shall be deemed a final action or order thus enabling judicial review pursuant to the provisions of Sections 10.08 or 13.08 to be sought.

Section 10.07 Decisions - A copy of Board decisions on all appeals and variance requests shall be mailed or hand delivered to the appellant, the applicant, the Planning Board, the Code Enforcement officer, and the Selectmen within seven (7) days. A copy which will provide notice to the public, shall also be placed on file and available for inspection in the Municipal Clerk's office.

A variance which has been granted shall expire six (6) months from the granting date unless substantial work (actual construction) in reliance upon it has commenced. Work commenced must normally be completed within two (2) years. A variance shall not be valid for a longer period of time but may be reissued for an additional two (2) year period if the nature of the project requires additional time and if work on the project has been more or less continuous.

Section 10.08 Judicial Review

Section 10.08 Judicial Review – A request and hearing for reconsideration may be made to the Zoning Board of Appeals within thirty (30) days from any final order, relief, or denial by an aggrieved party in accordance with 30A MRSA §2691 and 4353 and Maine Civil Procedure , Rule 80B.

An appeal may be taken, within forty five (45) days after a Zoning Board of Appeals decision is rendered by an aggrieved party to Superior Court from any final order, relief or denial in accordance with 30-A MRSA §4353 and with Maine Rules of Civil Procedure, Rule 80B. The hearing before the Superior Court shall be a trial do novo without a jury. (Amended 4/27/02)