

## **I. GENERAL PROVISIONS**

A. Business of the Board shall be conducted in accord with Maine Statutes, Municipal Ordinances and Roberts' Rules of Order.

## **II. APPOINTMENTS**

A. The Board shall consist of five (5) members and three (3) associates, all of whom shall be legal residents of the Town, appointed by the municipal officers for staggered terms of at least three (3) years and not more than five (5) years.

B. Neither a municipal officer nor their spouse may be a member of the Board.

C. Any member of the Board may be removed from the Board, for cause, by the Municipal-Officers before expiration of his/her term, but only after an advertised public hearing at which the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend three (3) consecutive Board meetings or hearings including workshop meetings without prior approval of chairman or voting when the member has a "conflict of interest". At the request of the member in question, the Board of Appeals shall discuss the matter in executive session.

D. When there is a permanent vacancy of either a full or associate member, the Chairman shall immediately notify the Selectmen. The Municipal Officers shall within forty-five (45) days or as soon as possible thereafter appoint a person to serve for the unexpired term.

## **III. OFFICERS AND DUTIES**

A. The officers of the Board shall consist of a Chairman, Vice Chairman and Secretary, who shall be elected annually by a majority of the Board.

B. CHAIRMAN. The Chairman shall perform all duties required by law and these by-laws, and preside at all meetings of the Board. The Chairman 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. The Chairman shall appoint any committees found necessary to carry out the business of the Board.

The Chairman's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board. The Chairman shall designate which associate member shall serve in place of any absent member.

C. VICE CHAIRMAN. The Vice Chairman shall serve in the absence of the Chairman and shall have all the powers of the Chairman during the Chairman's absence, disability or disqualification.

D. SECRETARY. The Secretary shall see that the stenographer keeps a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and maintains a file in the Appeals Board's office. The Secretary shall be responsible for reporting Findings of Fact at all meetings of the Board. The stenographer, working with the office staff, 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; and testimony presented; findings of fact and conclusions; the decision of the Board, and the date of assurance of the decision. Original documents shall be filed with the Town Clerk and copies sent to the Secretary of the Appeals Board. The Minutes and Findings of Fact shall be distributed to all members and associate members. All records are public and may be inspected at reasonable times.

E. The Secretary, subject to the direction of the Board and the Chairman, shall see that the stenographer keeps minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, including such fact. The Secretary shall also see that the stenographer arranges proper and legal notice of hearings, attends to correspondence of the Board, and to other duties as designated by the Chairman.

F. The officers of the Board shall provide the Selectmen annually with an accounting of all expenditures made by the Board during the previous year.

G. ALL MEMBERS. They shall be responsible for:

1. Knowledge of the laws that pertain to judgments they make.
2. Thorough knowledge of the local zoning ordinance.
3. Familiarity with related local ordinances, such as regulations concerning subdivisions and the municipal codes. Members should also be familiar with the Comprehensive Plan and State Statutes relating to their activities.
4. Regular attendance at meetings, workshops and hearings.

#### **IV. CONFLICT OF INTEREST**

A. 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.

B. The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefits to any 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. It shall also include a situation where the Board member by reason of his interest is placed in a situation of temptation to serve his own personal interest instead of the public's interest.

#### **V. POWERS AND LIMITATIONS**

A. The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party.

1. The Board may interpret the provisions of any applicable municipal ordinance it has been given jurisdiction to hear.
2. The Board may hear and decide Administrative Appeals as set forth in various sections of all the zoning ordinances including where any aggrieved party affected by a decision, order, rule or failure to act alleges there is an error in procedure followed by either the Code Enforcement Officer or the Planning Board and any other charged with the enforcement of any ordinance or in the interpretation of the Ordinance by the Code Enforcement Officer or the Planning Board and any other charged with the enforcement of any ordinance. Interpretive and administrative procedural errors may be modified or reversed by the Board by concurring vote of at least three members of the Board.
3. The Board may hear and decide a specific case where a relaxation of the ordinance may be affected only in the areas of height, area, structure size and setbacks. Expansions otherwise prohibited shall not

be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in adjoining zoning districts. The Board shall grant a variance by concurring vote of at least three (3) members only in strict compliance with all of the following criteria (as required by State law: Title 30, M.R.S.A. S4963):

- 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 to the general conditions in the neighborhood;
- c. That the granting of variance will not alter the essential character of the locality; and
- d. The hardship is not a result of action taken by the applicant or prior owner.

A variance is not justified unless all elements above are present. The burden of proof rests with the landowner to prove the above conditions exist. A financial disadvantage or personal hardship is not sufficient to grant a variance, as all variances must relate to a unique feature of the land.

B. The issuance of a variance is subject to any specific conditions contained in the applicable Town Ordinance/Regulations.

C. In granting a variance, the Board may prescribe such conditions and safeguards, as they deem advisable in order to protect public interest, health, safety and general welfare and the purpose of the ordinance.

## **VI. MEETINGS**

A. The regular meeting of the Board shall be held the second and fourth Wednesday of the month or as necessary.

B. The annual organization meeting of the Board shall be the first regular meeting in the month of October.

C. The chairman shall call a special meeting within ten (10) days of receipt of a written request from the majority of the Board or from the municipal officers, which request shall specify the matters to be considered at such special meeting. At least seventy-two hours written notice of the time, place, and business of meeting shall be given each member of the Board, the municipal officers, the Planning Board, the Code Enforcement Officer and the applicant if any is involved.

D. The order of business at regular meetings of the Board shall be as follows:

1. Roll call of members;
2. Reading and approval of the minutes of the preceding meeting;
3. Public hearing (Section IX refers);
4. Action on held cases;
5. Other business;

## 6. Adjournment.

E. 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, or discussions of Board of Appeals personnel and procedural matters.

## VII. VOTING

A. A quorum shall consist of five members of the Board. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.

B. 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 Chairman to call a special meeting for a subsequent date.

C. 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 members present and voting.

D. If the Board 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 a substantial portion of the hearing due to late arrival. The associate member will act for the regular until the case is decided.

E. If the Board has no associate members, no regular member shall vote on the determination of any matter requiring public hearing unless he has attended the public hearing thereon or has familiarized him or herself with such matter by reading the record.

## VIII. APPEAL PROCEDURE

A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V must file such application for appeal, in writing on forms stipulated, within thirty (30) days of the granting or denial of a permit. Thirty days is defined to mean the date the official written notification of decision is issued and signed by the appropriate representative of the Board or Town office involved and shall be counted beginning with the next day. If the 30<sup>th</sup> day occurs on a non-working day for the Town, the final date for filing of an appeal shall be the next regular workday for the Town. In the event of "failure to act" by any Town official or Board within the time limits set forth in the controlling Ordinance, an appeal may be filed on or after the day following the expiration of the time limit as set forth in the controlling Ordinance. The applicant shall file this appeal at the office of the Board of Appeals, setting forth the grounds for his/her appeal. Upon receiving the application the office secretary shall notify the Chairman of the Board or his/her designee.

B. The fee to accompany applications shall be \$100 dollars each for: 1) Administrative Appeal; 2) Special Exception; or 3) Variance. In addition to the fee, fifteen (15) copies of the completed application shall accompany the check. No application will be accepted without payment of the prescribed fee and all required copies. Checks may be made payable to the Town of York.

## IX. HEARINGS

A. The Board shall schedule a public hearing on all appeals applications within sixty (60) days of the acceptance of a completed appeal application.

B. The Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing. The Board shall also cause notice of the hearing to be given to the Municipal Officers, the Planning Board and the Code Enforcement Officer at least seven days in advance. The owners of property abutting that property for which the appeal is taken shall be notified by certified mail at least seven (7) days prior to the date of the hearing.

C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence, and it shall be the duty of the Chairperson to enforce this provision.

D. The order of business at a public hearing shall be as follows:

1. The Chairman calls the hearing to order and determines whether there is a quorum.
2. The Chairman then describes the purpose of the hearing, the nature of the case, and the general procedures to be followed.
3. The Board decides whether the applicant has the right, title or interest to appear before the Board.
4. The Board determines whether it has jurisdiction over the appeal.
5. The Board determines which individuals attending the hearing are parties to the action.

Parties to the action 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 action.

Parties to the action will be required to state for the record their name, residence, business or professional affiliation, the nature of interest in the hearing and whether or not they represent another individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity for the purpose of the hearing. The Board may also identify other witnesses who may offer or be required to give evidence. Witnesses will not be permitted to cross-examine parties to the action.

6. The Chairman gives a statement of the case and incorporates into the record correspondence and reports filed with the Board prior to the hearing. This material shall be available for public inspection.

7. The appellant is given the opportunity to present his or her case without interruption.

8. The Board and parties to the action may ask questions of the appellant through the Chairman.

9. Parties to the action are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.

10. The appellant may ask questions to the parties to the action and Board witnesses through the Chairman.

11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.

12. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.

13. 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 shall be notified of the date, time and place of the continued hearing, and the reasons for the continuance.

14. Written testimony may be accepted by the Board for seven (7) days after the close of the hearing if a decision has not been reached. All

written testimony shall be available for public inspection at the municipal offices during normal business hours.

15. The Board and its consultants have the right to submit proposed findings and conclusions at any public meeting prior to the decision being finalized.

E. The Board may waive any of the above rules upon good cause shown. For example, if the Board is reviewing a Planning Board decision for which a hearing was held and a complete record was made, a rehearing of all the evidence presented at the first hearing is not required, because the record of the first hearing can be incorporated into the Appeals Board record. All variance approvals granted by the Board of Appeals shall receive certification within fourteen (14) business days of the approval of findings of fact.

## **X. DECISIONS**

A. Decisions by the Board shall be made not later than twenty (20) days from the date of the final hearing.

B. The final decision on any matter before the Board shall be made by written order signed by the Chairman or Chairperson's designated alternate. 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.

C. The Board, in reaching said decision, shall be guided by standards specified in the applicable ordinance as well as by community goals and policies as specified in a comprehensive plan, if any, and by the findings in each case.

D. In reviewing an application on any matter, the standards in any applicable local ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

E. Notice of any decision shall be sent by mail or hand delivered to the applicant, his representative or agent, the Planning Board, the Code Enforcement Officer, and the municipal officers within seven (7) days of the decision.

F. A variance granted by the Board of Appeals must be filed with the York County Registry of Deeds within 90 days of the vote of the Board to grant the variance. A variance not filed within 90 days shall expire.

## **XI. RECONSIDERATIONS**

A. Any party aggrieved by a decision or order of the Board or a Board member may petition the Board to reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider must be filed within 10 days of the decision to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the vote on the original decision. The Board may conduct additional Hearings and receive additional evidence and testimony regarding the reconsideration during this time period. The Board may reconsider a decision only if:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based;
2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction; or
3. If a second application for a variance on property where a variance was previously denied is substantially different from the previous one.

## **XII. APPEALS TO SUPERIOR COURT**

Any party may take an appeal within forty-five (45) days of the vote on the original decision of the Board to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80-B.

A. These By-laws may be amended by a majority vote of the Board.

B. The invalidity of any section or provision of these By-laws shall not be held to invalidate any other section or provision of these By-laws.

Adopted by unanimous vote of Michael Swant, Joseph Carr, Peter O'Connor, Gene Sullivan, Leon Moulton, Robert Lascelles and Elizabeth Bardwell at the regular Board meeting on May 26, 2004.