

TOWN OF NEWRY
BOARD OF APPEALS ORDINANCE

I. GENERAL PROVISIONS:

- A. ~~Business of the~~Pursuant to 30-A M.R.S. § 2691, the Town of Newry ("Town") has established a Board of Appeals ("Board") shall be conducted in accord with Maine Statutes, Town Ordinances, and Roberts' Rules of Order.
- B. The business of the Board shall be conducted in accord with Maine Statutes and Town Ordinances.
- ~~B.C.~~ _____ It shall be the responsibility of the ~~board~~ Board to become familiar with the duly enacted ordinances of the ~~town~~ Town which it may be expected to act upon as well as with the applicable state statutes.
- ~~C.~~ _____ ~~It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in a "comprehensive plan," and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.~~

II. APPOINTMENTSMEMBERSHIP:

- A. The Board shall consist of ~~five~~ three (35) members appointed by the municipal officers of the Town of Newry for staggered terms of three (3) years. ~~The initial appointments shall be as follows: two (2) members to serve terms to expire as of the date of the Annual Town Meeting in 1993, and one (1) member to serve a term to expire as of the date of the Annual Town Meeting in 1994, and two (2) members to serve a term to expire as of the date of the Annual Town Meeting in 1995.~~
- ~~B.~~ _____ ~~Thereafter, all appointments to the Board shall be for terms of three (3) years.~~
- ~~C.B.~~ _____ ~~If state law permits,~~ the municipal officers may appoint one (1) associate member to the Board. The ~~chairperson~~ Chairperson of the Board shall designate when the associate member shall serve in place of the absent member.
- ~~D.C.~~ _____ Neither a municipal officer nor his or her spouse may be a member or an associate member of the Board.
- ~~E.D.~~ _____ 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 notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include but not be limited to failure to attend three (3) consecutive Board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest."

~~F.E.~~ When there is a permanent vacancy of either a full ~~of or~~ associate Board member position, the Secretary shall immediately notify the Town Clerk. The municipal officers shall within sixty (60) days appoint a person to serve for the unexpired term.

III. OFFICERS AND DUTIES:

- A. The officers of the Board shall consist of a Chairperson, Acting Chairperson, and Secretary, who shall be elected annually by a majority of the Board.
- B. CHAIRPERSON: The ~~chairperson~~ Chairperson shall perform all duties required by law and ~~these by law~~ this Ordinance and shall 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.
- C. 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.
- D. SECRETARY: The Secretary, subject to the direction of the Board and the Chairperson, shall ~~keep minutes~~ prepare minutes of all Board proceedings which shall include a record of Board proceedings as required by 1 M.R.S. §403, showing the date, time and place of the proceeding; the Board members conducting the proceeding, recorded as either present or absent; and all motions and votes taken, by individual member, if there is a roll call 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 also shall ~~keep~~ maintain 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. The Town may supply a recording secretary to carry out the functions listed in this paragraph III.D. under the direction of the Secretary. All records are public, shall be filed in the Town Clerk's office, and may be inspected at reasonable times.

IV. CONFLICT OF INTEREST:

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. The term “conflict of interest” shall be construed to mean direct or indirect pecuniary interest, which shall include but not be limited to 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, or bias that prevents a Board member or associate member from impartially considering and acting upon the matter before the Board.

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 town ordinance which are called into question.~~

~~2. The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable town ordinance.~~

~~3. 1. The Board may grant a variance as provided by the Town’s Unified Development Review Ordinance (“UDRO”). ~~only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words “undue hardship” as used in this subsection mean:~~~~

~~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 a 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.~~

4. 2. The Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action, or failure to act with respect to any license, permit, variance or other required approval, or any application therefor, 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 or the Planning Board pursuant to the UDRO;

- ~~a-b.~~ _____ rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;
- ~~b-c.~~ rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to any statute or Town Ordinance, including but not limited to the Town Land Use and Building Code Ordinance;
- ~~e-d.~~ rendered by the General Assistance Administrator pursuant to the Ordinance for General Assistance Administration or the Maine Statutes relating to general assistance;
- ~~d-e.~~ _____ rendered by the Planning Board ~~or the Selectmen~~ pursuant to the Subdivision Regulations or the Maine subdivision statute;
- ~~e-f.~~ rendered by the Select ~~men~~ Board or the Assessors pursuant to 36 M.R.S.A. 841 ~~and 30 M.R.S.A. 2060~~ (relating to the abatement of property taxes);
- ~~f-g.~~ rendered by the Select ~~men~~ Board pursuant to the Ordinance for the Regulation and Issuance of Special Amusement Permits or ~~28-~~ A M.R.S.A. 702-1054 (also relating thereto);
- ~~g-h.~~ _____ rendered by ~~the Selectmen or~~ the Road Commissioner(s) pursuant to the Street Design and Construction Standards Town Road Entrance Ordinance; and
 - ~~h.~~ rendered by the Selectmen pursuant to the Ordinance Regulating Town Cemeteries;
- i. rendered by the Planning Board or the Code Enforcement Officer pursuant to the Ordinance relating to Flood Hazard Building Permit System and Review Procedures;
- ~~j.~~ rendered by the Selectmen pursuant to the Policy on Warning Sign Requests;
- ~~k.~~ rendered by the Selectmen pursuant to the Ordinance Covering Excavations in Public Places;
- ~~l.~~ rendered by the Code Enforcement Officer or Building Inspector pursuant to the Sanitary Code;
 - ~~m.~~ rendered by the Town Manager (or other designated Hearing Officer) or the Selectmen pursuant to Section V (H) of the Town Personnel Policy relating to grievances and disciplinary procedures with respect to Town employees and officers;

B. The Board, after notice and public hearing, may adopt, amend, and repeal bylaws with their own rules of procedure for the conduct of its business not inconsistent with State statutes and Town ordinances. The bylaws shall be filed with the Town Clerk. Any rule of procedure therein not required by State statute or Town ordinances may be waived by the Board upon good cause shown.

VI. MEETINGS:

(P2455349.5)

- A. ~~The r~~Regular meetings of the Board shall be held as necessary but at least once a year or ~~as necessary~~.
- B. The annual organization meeting of the Board shall be the first regular meeting of the year, generally to be held after the Annual Town Meeting in March.
- C. The Chairperson shall call regular meetings of the Board as required. Special meetings of the Board may be called by the Chairperson. Also, 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 which request shall specify the matters to be considered at such special meeting. In addition, the Chairperson shall call meetings of the Board when requested to do so by the Select Board. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given to each member of the Board, the Select Boardmen, the Planning Board, and the Code Enforcement Officer.
- ~~D. The C~~hairperson shall call a special meeting within ten (10) days of receipt of a written request from any three (3) members of the Board which request shall specify the matters to be considered at such special meeting.
- ~~E.~~D. The order of business at regular meetings of the Board shall be as follows:
 - (A) roll call; (B) reading and approval of the minutes of the preceding meeting;
 - (C) action on held cases; (D) public hearing (when scheduled); (E) other business;
 - (F) adjournment.
- ~~F.~~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~~ as authorized by Maine's Freedom of Access Act, 1 M.R.S. §401 et seq.

VII. VOTING:

- A. A quorum shall consist of ~~three~~two (32) members of the Board.
- 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 Chairperson 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 the entire membership of the Board unless otherwise specified herein.
- D. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application or motion under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.

- F. If the Board has associate members, the Chairperson shall appoint an associate member to act for a regular member who is: disqualified from ~~noting~~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 member until the case is decided.
- G. If the Board has no associate members, 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.

VIII. APPEAL PROCEDURE:

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to ~~the section~~Section V 2. above must file such application for appeal, in writing on forms provided by the Town, within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the office of the Town Clerk, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board.
- B. The fee to accompany applications for appeal shall be ~~twentyseven five (\$2575) dollars for appeals related to residential property and one hundred fifty (\$150.00) appeals related to commercial property in the amount specified in the Fee Schedule adopted each year by the Select Board.~~ Checks are to be made payable to the Town of Newry.

IX. HEARINGS:

- A. The Board shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a completed appeal application ~~unless this time period is extended by agreement of the parties.~~
- B. Unless otherwise required by State statute or Town ordinance, ~~the~~ 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 two (2) times, the date of the first publication to be 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, the Code Enforcement Officer, and the owners of property directly abutting and directly across a street from the subject property ~~that~~ for which the appeal is taken at least twenty-seven (207) days prior to the date of the hearing. For purposes of this Section IX, the owners of property shall be considered to be the parties listed by the Assessors as those against who property taxes are assessed. The failure of any property owner to receive a notice of public hearing,

shall not necessitate another hearing and shall not invalidate any action of the Board. The cost of noticing shall be charged to the appellant.

- C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The order of business at the public hearing shall be as follows:
 - 1. The Chairperson calls the hearing to order.
 - 2. The Chairperson determines whether there is a quorum.
 - 3. The Chairperson gives a statement of the case and reads all correspondence and reports received.
 - 4. The Board determines whether it has jurisdiction over the appeal.
 - 5. The Board decides whether the applicant has the right to appear before the Board.
 - 6. 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 Boards 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 Select Board members, 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.
 - 7. The appellant is given the opportunity to present his or her case without interruption.
 - 8. The Board and interested parties may ask questions of the appellant through the Chair.
 - 9. The interested parties 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 of the interested parties and Board witnesses directly.
 - 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 should be notified of the date, time, and place of the continued hearing.

~~14. Written testimony may be accepted by the Board for seven (7) days after the close of the hearing.~~

D. The Board may waive any of the above rules if good cause is shown.

X. DECISIONS:

- A. Decisions by the Board shall be made not later than thirty (30) days from the date of the ~~final close of the public hearing~~ unless the appellant and the Board agree to additional time for decision.
- B. 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 therefor, upon all the material issues of fact, law or discretion presented and the appropriate order, relief, or denial thereof.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable ~~state~~ State laws/statutes, ~~local~~ Town ordinances, ~~policies specified in the Comprehensive Plan,~~ and by ~~Findings~~ findings of ~~Fact~~ fact by the Board in each case.
- D. In reviewing an application on any matter, the standards in any applicable State statute or local ~~Town~~ ordinance ~~or statute~~ shall take precedence over the standards of ~~these rules~~ this Ordinance whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. The person filing the application or appeal shall bear the burden of proof.
- ~~E.F.~~ The Board's standard of review for a particular application or appeal shall be as provided in the State statute or Town ordinance under which an application or appeal is made. 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.
- ~~F.G.~~ 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, and the municipal officers within seven (7) days of the decision.

G.H. 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.

H.I. 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 decision; however, the Board may extend this time an additional ninety (90) days.

XI. RECONSIDERATIONS:

A. The Board may reconsider any decision 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, notification of all interested parties, 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.

A.B. Notwithstanding Section XII below, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration or within the applicable time period under State law~~The Board must decide to reconsider any decision, 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 Article VI of ~~these By-laws~~ this Ordinance. The Board may conduct additional hearings and receive additional evidence and testimony.

B.C. Reconsideration should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

XII. APPEAL TO SUPERIOR COURT:

A. Any aggrieved party may take an appeal from The-the decision of the Board of Appeals~~may be taken,~~ within thirty forty-five (3045) days~~after the decision is rendered of the vote on the original decision, by any party~~ to Superior Court in accordance with the Maine Rules of Civil Procedure.

XIII. SEVERABILITY:

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

| Amended: _____, 2025