

TOWN OF NEWRY
BOARD OF APPEALS ORDINANCE

I. GENERAL PROVISIONS:

- A. Pursuant to 30-A M.R.S. § 2691, the Town of Newry (“Town”) has established a Board of Appeals (“Board”) .
- B. The business of the Board shall be conducted in accord with Maine Statutes and Town Ordinances.
- C. It shall be the responsibility of the Board to become familiar with the duly enacted ordinances of the Town which it may be expected to act upon as well as with the applicable state statutes.

II. MEMBERSHIP:

- A. The Board shall consist of three (3) members appointed by the municipal officers of the Town of Newry for staggered terms of three (3) years.
- B. The municipal officers may appoint one (1) associate member to the Board. The Chairperson of the Board shall designate when the associate member shall serve in place of the absent member.
- C. Neither a municipal officer nor his or her spouse may be a member or an associate member of the Board.
- 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.”
- E. When there is a permanent vacancy of either a full 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 shall perform all duties required by law and 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 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. 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 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:

- A. The Board shall have the following powers:
 - 1. The Board may grant a variance as provided by the Town's Unified Development Review Ordinance ("UDRO").

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;
- b. rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;
- 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;
- d. rendered by the General Assistance Administrator pursuant to the Ordinance for General Assistance Administration or the Maine Statutes relating to general assistance;
- e. rendered by the Planning Board pursuant to the Subdivision Regulations or the Maine subdivision statute;
- f. rendered by the Select Board or the Assessors pursuant to 36 M.R.S.A. 841 (relating to the abatement of property taxes);
- g. rendered by the Select Board pursuant to the Ordinance for the Regulation and Issuance of Special Amusement Permits or 28-A M.R.S.A. 1054 (also relating thereto);
- h. rendered by the Road Commissioner(s) pursuant to the Town Road Entrance Ordinance; and
- 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.

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:

A. Regular meetings of the Board shall be held as necessary but at least once a year or.

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- 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 Board, the Planning Board, and the Code Enforcement Officer.
- 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.
- 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 as authorized by Maine's Freedom of Access Act, 1 M.R.S. §401 *et seq.*

VII. VOTING:

- A. A quorum shall consist of two (2) 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 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 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 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 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 for which the appeal is taken at least seven (7) 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 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. 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.
- 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 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 statutes, Town ordinances, and by findings of fact by the Board in each case.
- D. In reviewing an application on any matter, the standards in any applicable State statute or Town ordinance shall take precedence over the standards of 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.
- 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.
- 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.
- 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.
- 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. RECONSIDERATION:

- 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.
- 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. A meeting to decide whether to reconsider shall be called by the Chairperson in accordance with Article VI of this Ordinance. The Board may conduct additional hearings and receive additional evidence and testimony.

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 decision of the Board of Appeals within forty-five (45) days of the vote on the original decision to Superior Court in accordance with the Maine Rules of Civil Procedure.

XIII. 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.

Amended: May 12, 2026

Attested:  Date: 5-12-2026