

ARTICLE 6 - BOARD OF APPEALS

6.1 Appointment and Composition.

The Municipal officers shall appoint a Board of Appeals consisting of five (5) members all of whom shall be residents of Buxton. The terms of members shall be three (3) years except that initial appointments shall be at least three (3) years and not more than five (5) years such that the terms of office of no more than two (2) members shall expire in any single year. The Board shall elect annually a Chairman, Vice-Chairman and Secretary from its membership. Neither a Municipal Officer nor his or her spouse may be a member of the Board. A quorum shall consist of three (3) members and all questions shall be decided by majority vote.

6.2 Powers and Duties.

The Board shall have the following powers and duties.

6.2.A. Administrative Appeals of Code Enforcement Officer Decisions. Any person aggrieved by a decision of the Code Enforcement Officer may appeal such a decision to the Board within 30 days of the written decision. Appeals from decisions of the Code Enforcement Officer are de novo. The Code Enforcement Officer must transmit to the Board the decision and all documents and other evidence on which the decision was based, which may be considered as evidence in the de novo proceeding. The Board must conduct a public hearing. The standard of review is whether, on the basis of the evidence before the Board, the application complies with the requirements of the Zoning Ordinance. The burden of proof is on the applicant for the permit or approval. The Board has the authority to grant, grant with conditions, or deny a permit or approval.

6.2.A.1 Notwithstanding Section 6.2.A, notice of violation, enforcement orders, suspension or revocations of permits or approvals, written determinations of no violation, or any other enforcement decisions of the Code Enforcement Officer are advisory only and may not be appealed to the Board.

6.2.B. Variance Appeals. The Board may grant a Variance only from the term of this Ordinance which impose restrictions on height, buildable area, lot coverage, lot size or setback and only where strict application of those terms to the petitioner and his property would cause undue hardship to the petitioner, owing solely to conditions peculiar to the property and not the result of actions of the petitioner. A financial hardship shall not constitute grounds for granting a Variance. The crucial points for obtaining a Variance are undue hardship and unique circumstances applying to the property, neither of which are the results of actions taken by the applicant or a prior owner. A Variance shall not be granted unless all four elements contained in the definition of undue hardship in Article 2 are presented to the Board. In granting Variance appeals, the Board may prescribe such conditions and safeguards as are appropriate under the Ordinance. In areas of Special Flood Hazard, as established in Article 3.3, permits shall be issued according to the provisions of Article 14 of this Ordinance, without regard to section 5.5.

6.2.B.1. Notwithstanding the above requirements and the definition of undue hardship in Article 2, the Board may grant a Variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any Variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the Variance, including limiting the Variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this paragraph, a disability has the same meaning as a physical or mental handicap under Title 5 MRSA, Section 4553 and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

6.2.B.2. Notwithstanding the above requirements and the definition of undue hardship in Article 2, the Board may grant a setback or yard width Variance for a single-family dwelling without the need for the Board to determine that the land in question cannot yield a reasonable return unless the Variance is granted. When considering a request for a Variance under this paragraph the Board shall in addition to determining the remaining three aspects of undue hardship are met, determine that granting the Variance will not substantially reduce or impair the use of abutting property and that granting the Variance is based upon demonstrated need, not convenience and no other feasible alternative is available which meets the setback requirements. A Variance granted under this paragraph is strictly limited to those from setback and yard width requirements for single family dwelling that is the primary year-round residence of the applicant. A Variance granted under this paragraph may not exceed 20% of a setback or yard width requirement and may not be granted if the Variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

6.2.B.3. Notwithstanding the above requirements and the definition of undue hardship in Article 2, The Board may grant a Variance from certain dimensional standards of this Zoning Ordinance when strict application of the dimensional standards to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- A. The need for the Variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. 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;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a Variance is available to the petitioner;
- E. The granting of a Variance will not unreasonably adversely affect the natural environment ;
and

F. The property is not located in whole or in part within the shoreland areas as defined in 38 M.R.S.A, § 435.

As used in this Section 6.2.B.3:

“Dimensional standards” means and is limited to those provisions of this Zoning Ordinance relating to lot area, lot coverage, frontage, and setback requirements.

“Practical difficulty” means that the strict application of the dimensional standards to the property for which a Variance is sought would preclude the ability of the petitioner to pursue a use of the property which is allowed in the zoning district in which the property is located and would result in significant economic injury to the petitioner.

“Significant economic injury” means the value of the property if the Variance were denied would be substantially lower than its value if the Variance were granted. To satisfy this standard, the petitioner need not prove that denial of the Variance would mean the practical loss of all beneficial use of the land.

6.2.B.4 If the Board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. The applicant is responsible for the recording of this certificate in the York County Registry of Deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval. Added June 15, 2002.

6.2.C Appeals of the Planning Board Decisions. Decisions of the Planning Board may not be appealed to the Board. Any person aggrieved by a decision of the Planning Board may appeal such decisions directly to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

6.3 Appeal Procedure.

6.3.A. The Chairman shall call hearings of the Board as required. The Chairman shall also call hearings of the Board when requested to do so by a majority of the members or by the Municipal Officers. The Chairman, or in his absence, the Vice-Chairman shall preside at all hearings of the Board and be the official spokesman of the Board.

6.3.B. The Secretary shall maintain a permanent record of all Board hearings and all correspondence of the Board. The Secretary shall be 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 deemed public and shall be filed in the municipal clerk's office and may be inspected at reasonable times.

6.3.C. Notification of an appeal shall be filed with the Board in writing on forms provided for that purpose. The specific grounds for the appeal shall be set forth on the application. The application shall be accompanied by a fee as provided in Section 5.8. The Board shall hold a Public Hearing within thirty (30) days of receipt of an application.

6.3.D. The Board shall reasonably notify of any hearing, the petitioner, the Code Enforcement Officer and Municipal Officers, and such persons shall be made parties to the action. The Board shall notify by certified mail all owners of property abutting the property for which an appeal is taken of the nature of the appeal and the time and place of the hearing thereon at least seven (7) days prior to the hearing. Owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive such notice of hearing shall not necessitate another hearing nor invalidate any action by the Board. The Board shall publish a notice of appeal at least once in newspaper of general circulation in the area at least seven (7) days prior to the hearing. The cost of noticing and advertisement shall be paid by the applicant prior to the Public Hearing.

6.3.E. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.

6.3.F. The transcript of testimony, if any, and exhibits together with all papers filed in a proceeding shall constitute the record. All decisions shall be made within thirty (30) days of the hearing and shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of the Board's decision shall be mailed, or hand delivered to the petitioner, his representative or agent, the Code Enforcement Officer, the Planning Board and the Municipal Officers within seven (7) days of such decision. A copy of all Variances granted by the Board of Appeals within the shoreland zone shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

6.3.G. An appeal from any order, relief or denial of the Board of Appeals may be taken by any aggrieved party to Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.