

## BOARD OF APPEALS ORDINANCE, TOWN OF ORLAND

### I. APPEAL PROCEDURE

- A. Any person aggrieved by an action which comes under the jurisdiction of the Appeals Board pursuant to Section IV of this Ordinance, must file such application for appeal, in writing on forms provided, within thirty (30) days of the granting or denial of an application for a permit or other approval. The applicant shall file this appeal (along with nine (9) copies) with the Recording Secretary, setting forth the grounds for his/her appeal. Upon receiving the application for appeal, the Recording Secretary shall notify the Chairperson of the Appeals Board.
- B. The fee to accompany applications for appeal shall be set by the Selectmen annually, based on the Town's actual costs of administering and enforcing the ordinance.

### II. GENERAL PROVISIONS

- A. Business of the Appeals Board shall be conducted in accordance with Maine Statutes and Town Ordinances.
- B. It shall be the responsibility of the Appeals Board to become familiar with all the duly enacted ordinances of the Town which it may be expected to act upon as well as with the applicable state statutes.

### III. APPOINTMENTS

- A. The Appeals Board shall consist of five (5) members appointed by the municipal officers of the Town of Orland for five year staggered terms. At the effective date of this ordinance, the current Appeals Board shall be reestablished and current members shall continue to serve until each term expires.
- B. The municipal officers shall appoint two (2) alternate members to the Appeals Board. The alternate member(s) term(s) shall be for two (2) years.
- C. Neither a municipal officer nor his or her spouse may be a member or an alternate member of the Appeals Board.
- D. Any member of the Appeals Board may be removed from the Appeals 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 failure to attend three (3) consecutive Appeals Board meetings or hearings without sufficient justification.
- E. When there is a permanent vacancy of either a full or alternate member, 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.

#### IV. POWERS AND LIMITATIONS

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

A. The Appeals Board may interpret the provisions of any applicable town ordinance which are called into question.

#### B. Appeals

##### 1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

- a. Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration of any town ordinance.
- b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

##### 2. Variance Applications

Variance applications may be made directly to the Board of Appeals.

Variances may be permitted only under the following conditions:

- a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, setback, area, and frontage requirements.
- b. Variances shall not be granted for establishment of any uses otherwise prohibited by any Town Ordinance.
- c. The Board shall not grant a variance unless it finds that:
  - (1) The proposed structure or use would meet the provisions of the Ordinance in questions except for the specific provision which has created the non-conformity and from which relief is sought; and
  - (2) The strict application of the terms of this ordinance would result in undue hardship.

#### IV. POWERS AND LIMITATIONS(cont.)

In order to prove “undue hardship”, all of the following criteria must be met.

- (i) That the land in question cannot yield a reasonable return unless a variance is granted;
  - (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - (iii) That the granting of a variance will not alter the essential character of the locality; and
  - (iv) That the hardship is not the result of action taken by the applicant or a prior owner;
  - (v) The land in question shall meet all criteria except that for which relief is sought.
- d. The Board of Appeals 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 subsection 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. The term “structures necessary for access to or egress from the property” shall include, but not be limited to, railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- e. The Board of Appeals shall limit any variances granted to insure conformance with the purposes and provisions of all Town ordinances to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- f. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.
- C. The Appeals Board shall have the power to hear and determine all administrative appeals by any person directly or indirectly affected by any decision, with respect to any license, permit, waiver, variance or other required approval, or any application therefore,

including, the grant, conditional grant, denial, suspension, or revocation of any such license, permit, waiver, variance or other approval (hereinafter a "Decision")

IV. POWERS AND LIMITATIONS (cont.)

Any decision rendered by the Code Enforcement Officer or the Planning Board pursuant to:

Shoreland Zoning Ordinance, Flood Plain Ordinance, Subdivision Ordinance,  
Sewer Ordinance, Site Plan Review Ordinance, Trailer Park Ordinance  
And any future town ordinances.

- D. Upon granting an appeal/variance, the Appeals Board shall, within seven days of granting the appeal/variance, direct the Planning Board or Code Enforcement Officer to issue the permit within 14 days.

V. VOTING

- A. A quorum shall consist of at least three (3) members of the Appeals Board, including alternates as appropriate.
- B. No hearing or meeting of the Appeals Board shall be held, nor any action taken, in the absence of a quorum; 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 majority roll call vote of members present.
- D. A tie vote shall be considered a rejection of the application under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Appeals Board in establishing the quorum for such matters.
- F. The Chairperson shall appoint an alternate member to act for a regular member who is disqualified from voting, unable to attend the hearing, or absent for a substantial portion of the hearing due to late arrival. If the five regular members are not all present, the Chairperson shall appoint an alternate in the absence of a regular member.

VI. HEARINGS

- A. The Appeals Board shall schedule a public hearing on all appeal applications within thirty (30) days of the filing of a completed appeal application.
- B. The Appeals 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, before the hearing. The Appeals 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 abutting that for which the appeal is taken, at least seven (7) days prior to the date of the hearing. Abutting property shall include any parcel within five hundred feet (500') of the property and on opposite sides of any road from the property as well as property immediately adjoining. Notices will be posted in three (3) public places.

- C. The Appeals Board shall provide, as a matter of policy, for exclusion of irrelevant, immaterial, or unduly repetitious evidence.

## VII. DECISIONS

- A. Decisions by the Appeals Board shall be made not later than thirty-five (35) days from the date of the final hearing.
- B. The final decision on any matter before the Appeals 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 therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- C. The Appeals Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan, if any, and by Findings of Fact by the Appeals Board in each case.
- D. Notice of any decision shall be sent by certified or registered mail, or hand delivered, to the applicant or his representative or agent, and by written notice to the Planning Board, the Code Enforcement Officer, and the municipal officers, within seven (7) days of the decision.
- E. Decisions of the Appeals Board shall be immediately filed in the Town Files and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Appeals Board.

## VIII. ADMINISTRATIVE APPEAL

The Appeals 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 the Town ordinances or unsupported by substantial evidence in the record.

## IX. RECONSIDERATION

- A. The Appeals Board may reconsider any decision. The Appeals Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within thirty (30) days of the vote on its decision. A meeting to decide whether to reconsider, shall be called by the Chairperson. The Appeals Board may conduct additional hearings and receive additional evidence and testimony.
- B. 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 Appeals Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

X. APPEAL TO SUPERIOR COURT

An appeal from the decision of the Board of Appeals may be taken within thirty (45) days of the date of the final vote by the Appeals Board by any party, to Superior Court in accordance with the Maine Rules of Civil Procedure.

XI. 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.