

BOARD OF APPEALS ORDINANCE, TOWN OF OTISFIELD

I. GENERAL PROVISIONS

- A. Business of the Board shall be conducted in accordance with Maine Statutes Town Ordinances.
- B. It shall be the responsibility of the 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.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the “comprehensive plan”, if any, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.

II. APPOINTMENTS

- A. The Board shall consist of five (5) members appointed by the municipal officers of the Town of Otisfield for the term of five (5) years. The term of each appointment is staggered over a five (5) year period. At the effective date of this ordinance, the current board shall be re-established and current members shall continue to serve until the term expires.
- B. The municipal officers shall appoint up to two (2) associate members to the Board. The associate member(s) term shall be for two (2) years.
- C. Neither 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 failure to attend four (4) consecutive Board meetings or hearings without sufficient justification.
- E. When there is a permanent vacancy of either a full or associate 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.

III. OFFICERS AND DUTIES

The officers of the Board shall consist of a Chairperson, an acting Chairperson and a Secretary, who shall be elected Annually by a majority of the Board.

- A. **CHAIRPERSON.** The chairperson shall perform all duties required by law and these by-laws and preside at all meetings of the board. The chairperson shall rule on issues of evidence, order and procedure and shall take such 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.

- B. ACTING CHAIRPERSON. The acting chairperson shall serve when the Chairperson is absent, disabled, disqualified or otherwise unavailable and shall have all the powers of the Chairperson when so serving.
- C. SECRETARY. The secretary shall be responsible for keeping a recording/tape of the minutes of the Board's meetings and any other duties that the Chair sees fit to assign to this position.
- D. RECORDING SECRETARY. The recording Secretary, a paid employee of the Board and subject to the direction of the Board and Chairperson, shall keep minutes of all Board proceedings, showing the 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, and determination 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. All records are public and may be inspected at reasonable times.

IV. CONFLICT OF INTEREST

Any question of where 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 pecuniary benefit to any member of the person's immediate family (grandfather, grandmother, father, mother, wife, son, daughter, grandchildren, e.g.) or to his employer or the employer of any member of the person's immediate family.

V. POWERS AND LIMITATIONS

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

- A. The Board may interpret the provisions of any applicable town ordinance, which are called into question.
- B. The Board may grant the a variance to the Site Plan Ordinance, to the Shoreland Zone Ordinance and the Building Ordinance only upon 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:
 - 1. That the land in question cannot yield a reasonable return unless a variance is granted:
 - 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and
 4. The hardship is not a result of action taken by the applicant or a prior owner.
- C. The 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”):
1. Rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;
 2. rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to any statute or Town ordinance.
 3. rendered by the General Assistance Administrator pursuant to the Ordinance for General Assistance Administration or the Maine Statutes relating to general assistance;
 4. rendered by the Selectmen pursuant to the Cemetery Policies and Regulations;
 5. rendered by the Planning Board or the Code Enforcement Officer pursuant to the Ordinance relating to Flood Hazard Building Permit System and Review Procedures;
 6. rendered by the Planning Board pursuant to the Site Plan Review Ordinance.

VI. MEETINGS

- A. Regular meeting of the Board shall be held as necessary.
- B. The annual organization meeting of the board shall be the First Wednesday of the Month after the date of the Annual Town Meeting.
- C. Special Meetings of the Board may be called by the Chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board, the Selectman, the Planning Board and the Code Enforcement Officer, as appropriate.
- D. The Chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the Board which request shall specify the matters to be considered at such special meeting.
- E. The order of business at regular meetings of the Board shall be as follows: A) a roll call, B) reading and approval of the minutes of the preceding meetings; C) action on held cases; D) public hearing (when scheduled); E) other business; F) adjournment.
- F. All meetings of the Board shall be open to the Public, except executive sessions. No vote may be taken by the Board except in Public meeting. The board shall not hold executive sessions except for consultation between the Board and it’s legal counsel concerning litigation or other legal matters, where premature general public knowledge would clearly place the Town of Board at a substantial disadvantage.

VII. 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. 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 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 for 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. No regular member shall vote on the determination of any matter requiring public hearing unless he/she has attended the site inspection and public hearing thereon; however, where such a member has familiarized himself/herself with such matter by reading the record, he/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 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 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. Fees shall not exceed an amount equal to the town's actual cost of administering and enforcing the Ordinance. Checks are made payable to the Town of Otisfield.

IX. 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 at least two times, the date of the first publication to be at least (7) days prior to 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 twenty (20) 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.

- C. The Appeals Board shall provide, as a matter of policy, for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The order of business at a 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 appearance 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, the Code Enforcement Officer shall automatically be made parties to the proceedings. 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/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 through out 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.

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

X. 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 business (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.
- F. Unless otherwise specified, any order or decision of the Board 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 vote to approve or deny the application; however, the Board may extend this time any additional ninety (90) days for extenuating circumstances. Extenuating circumstances shall include, but not be limited to recommendations by a soils engineer as to when the work should take place.

XI. 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.

XII. 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 in accordance with Article VI of this ordinance. 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.

XIII. APPEALS TO SUEPRIOR COURT

An appeal from the decision of the Board of Appeals may be taken within thirty (30) 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.

XIV. CONFLICT WITH THIS OR OTHER ORDINANCES

Whenever the requirements of this Ordinance are inconsistent w/ the requirements of any other Ordinance, Code or Statute, the more restrictive requirements shall apply.

XV. 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.

TANYA TAFT
02.21.12