

Town of Newport
Board of Appeals Ordinance

§ 1. Establishment. A Board of Appeals is established pursuant to 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. § 2691 to exercise jurisdiction as provided by this Ordinance.

§ 2. Membership; qualification; and dismissal.

- A. The Board of Appeals shall be composed of five (5) Members and two (2) Alternate Members.
- B. Members and Alternate Members shall be appointed by the Board of Selectmen to serve three (3) year terms. Terms shall be staggered so no more than two Members' terms and one Alternate Member's term expire in the same year. In the event that a Member or Alternate Member does not complete the term to which he or she was appointed, the Board of Selectmen shall appoint a replacement to serve the rest of the term.
- C. Alternate Members may participate in the discussion of an item in all respects as Members except voting. In the event that a Member is absent, the Chair shall designate an Alternate Member to vote in the Member's place.
- D. Legal residents of the Town of Newport are qualified to serve as Members and Alternate Members, except that the municipal officers and their spouses may not serve as Members or Alternate Members.
- E. The municipal officers may dismiss a Member or Alternate Member for good cause before the expiration of his or her term.

§ 3. Organization and procedure.

- A. The Board shall annually elect a Chair and a Secretary from its Members.
- B. The Chair shall call meetings of the Board as required and when requested to do so by a majority of the Members or by the municipal officers.
- C. A quorum of three (3) Members and/or alternates is required to conduct an official board meeting.
- D. The Chair shall preside at all meetings of the board and be the official spokesman of the board. In the Chair's absence, the Board shall elect a *pro tem* Chair for that meeting.
- E. The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board.

- F. All proceedings of the Board shall be conducted in accordance with the Freedom of Access law, including its executive session. The Board's records shall be filed in the municipal clerk's office and are subject to public disclosure as provided by the Freedom of Access law.
- G. Prior to considering any appeal, Members and Alternate Members shall disclose any potential conflicts of interest. A conflict of interest may be based on having a pecuniary interest in the matter under appeal or a special bias rendering the person unable to make a fair and impartial decision on the matter under appeal. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a person from voting on that issue shall be decided by a majority vote of the Board, excluding the person who is being challenged.
- H. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.
- I. The Board may receive any oral or documentary evidence but shall exclude of irrelevant, immaterial or unduly repetitious evidence.
- J. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the Board, and the exhibits, together with all papers and requests filed in the proceeding, constitute the public record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief.
- K. Notice of any decision must be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within seven (7) days of the Board's decision.

§ 4. Jurisdiction and standard of review.

- A. Unless a different standard of review is specified, the Board shall conduct a *de novo* review.
- B. The Board of Appeals is authorized to hear administrative appeals as follows:
 - i. From decisions of the Code Enforcement Officer and Planning Board made under the Shoreland Zoning Ordinance. The Board may reverse or modify the decision under appeal only upon a finding that the decision is clearly contrary to the specific provisions of the Shoreland Zoning Ordinance.
 - ii. From decisions of the Code Enforcement Officer and Planning Board made under the Land Use Ordinance.
 - iii. From decisions of the Code Enforcement Officer made under the Building Ordinance.

- iv. From decisions of the Town Manager made under the Town of Newport Personnel Policy, as may be amended from time to time.
- v. From decisions of the municipal officers under 28-A M.R.S.A. § 1054.
- C. The Board of Appeals is designated as the Town of Newport Board of Assessment Review.
- D. The Board of Appeals is authorized to hear variance appeals as provided for in Shoreland Zoning ordinance and Zoning ordinance.

§ 5. Reconsideration.

- A. Reconsideration by Motion of a Member of the Board. The Board may reconsider any decision on its own motion within 45 days of its prior decision by a majority vote of the Board to reconsider the matter. The Board shall render a final decision on a reconsidered matter within 45 days of the date of the vote on the original decision.
- B. Reconsideration by Motion of any other party. A request by any other party to the Board to reconsider a decision must be filed within ten (10) days of the decision that is to be reconsidered. The Board shall vote whether to reconsider the matter, and if a majority of the Board votes to reconsider the matter, the Board shall render a final decision on a reconsidered matter within 45 days of the date of the vote on the original decision.
- C. Upon a vote to reconsider a matter, the Board may conduct additional hearings and receive additional evidence and testimony.

§ 6. Further appeal.

- A. Any party may take an appeal, within 45 days of the date of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B.
- B. Notwithstanding paragraph A, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

Attest, a true copy of an ordinance entitled “The Board of Appeals Ordinance of the Town of Newport”, as certified by the municipal officers of the Town of Newport, Maine and adopted by the Town Meeting on the 12th day of March, 2011.

Signature _____

Paula A. Scott, Municipal Clerk

TOWN OF NEWPORT
BOARD OF APPEALS

COPY FOR YOUR
INFORMATION

BY-LAWS

Art. I Purpose and Objectives

The purpose and objective of the Board of Appeals of the Town of Newport are those set forth in MRSA Title 30, Section 2411 and those powers and duties delegated to the Board of Appeals by the Municipal Officers or vote of the inhabitants at a Town Meeting and in accordance with the above mentioned enabling law, subject also to the discretion of any and all laws and regulations of the Maine State Legislature.

Art. 11 Officers and their duties

- Section 1. The officers of the Board of Appeals shall consists of a chairman and a secretary.
- Section 2. The Chairman shall preside at all meetings and hearings of the Board of Appeals and shall have the duties normally confirmed by parliamentary procedure on such officers.
- Section 3. The Chairman shall be one of the members of the Board and shall have the privilege of discussing all matters before the Board and vote thereon
- Section 4. A temporary chairman shall be elected by a majority vote of those members present to preside at meetings in which the chairman is absent.
- Section 5. The Secretary shall keep the minutes and records of the Board, prepare the agenda of regular and special meetings with the Chairman, provide notice of meetings to Board members, arrange proper and legal notice of hearings, attend to correspondence of the Board and such other duties as are normally performed by a secretary. The secretary shall be an appointive member of the Board.

Art III Election of Officers

- Section 1. Nomination of officers shall be made from the floor of the regular meeting of April each year and the election shall follow immediately thereafter.

- Section 2 A candidate receiving a majority vote of the entire membership of the Board shall be declared elected and shall serve for one year or until his successor shall take office.
- Section 3. Vacancies in office shall be filled immediately by regular election procedure.

Art. IV Meeting

- Section 1. Meetings shall be held at the Newport Town Office within 45 days of receipt of a completed application to appeal, but not less than 30 days from receipt of a completed application to appeal, at 7:00 P.M. in the evening. The Board by resolution may agree, by majority vote, to hold its meetings on any day in the month as required. (Nov 17, 2009)
- Section 2. Three members of the Board shall constitute a quorum. The number of votes necessary to transaction business shall be three. A record of the vote shall be kept as a part of the minutes.
- Section 3. Special meetings may be called by the Chairman. It shall be the duty of the Chairman to call such a meeting when requested to do so in writing by a majority of the majority of the members of the Board. The notice of such a meeting shall specify the purposes of said meeting and no other business may be considered except by unanimous consent of the Board in writing not less than five (5) ays in advance of such special meeting.
- Section 4. All meetings at which official action is taken shall be open to the general public.
- Section 5. A majority vote of the Board shall be required to amend the by laws.

Art. V Hearing Procedure

When a petitioner requesting a hearing is notified of the date, time, and place for that hearing in writing, he will also be given adequate preliminary information about the hearing procedure to insure effective preparation of his case. The petitioner shall be permitted to review his file to the hearing. As a minimum, he will be given the following information, which will govern all hearings.

- Section 1. Be conducted openly
- Section 2. Be open with presentation of the issue by the Chairman of the Board of Appeals
- Section 3. Be conducted informally, unless a formal hearing is requested,

without technical rules of evidence, but subject to the requirements of due process.

a. At informal hearings the petitioner and the respondent shall each be limited to one half hour for presentation of their case, unless an extension is granted by the majority of the Board members present.

b. Formal hearings shall be conducted in accordance with rules of evidence.

Section 4. Allow the petitioner and the Town Official the option to present their positions for themselves or with the aid of others, including legal counsel.

Section 5. Give all participants an opportunity to:

- a. Present oral or written testimony or documentary
- b. Offer rebuttal
- c. Question witnesses
- d. To examine all evidence presented at the hearings

Section 6. Result in a decision based exclusively on evidence or testimony presented at the hearing.

Section 7. Be permanently recorded, having a written decision filed with evidence introduced at the hearing. The hearing will allow the petitioner to establish all pertinent facts and circumstances, and to advance any arguments without undue interference. A Board of Appeals will not review any material prior to the hearing unless the same material is made available to the petitioner or his representative.

Art. VI Disposition of Decision

A decision of the Board of Appeals will be binding on the Town Official, and will be communicated in writing to the petitioner within a reasonable time after completion of the hearing. Written notice if the decision will contain the following:

Section 1. A statement of the issue

Section 2. Relevant facts brought out at the hearing

Section 3. Pertinent provisions in law or local policy related to the decision

- Section 4. The decision and the reasons for it
- Section 5. Copies of the notice of the decision will be provided for the petitioner, the hearing record, and the Town Official. The written notice of decision will state that if the petitioner is dissatisfied with the hearing decision he may appeal the decision under Maine rules of civil procedure, Rule 80B. To take advantage of this right the petitioner must file a petition for review with the Superior Court within 30 days of receipt of the hearing decision.
- Section 6. The Board in its just discretion reserves the right to consider, to its own motion or that of a petitioner, a final decision for the following reasons: fraud, new evidence, excusable neglect. Action to reconsider a decision must commence within one month from written notice of the decision.