

TOWN OF NORRIDGEWOCK

Board of Appeals Ordinance

TOWN OF NORRIDGEWOCK
BOARD OF APPEALS ORDINANCE

ADOPTED AT ANNUAL TOWN MEETING ON MARCH 1, 1993
Revisions adopted at Annual Town Meeting on March 4, 2013

I. GENERAL PROVISIONS:

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and Roberts' Rules of Order.
- 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 a "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 Norridgewock for terms of five (5) years. The initial appointments shall be as follows: to continue existing appointments with existing terms.
- B. Thereafter, all appointed members must be legal residents of the Town.
- C. If State Law permits, the Municipal Officers may appoint up to three (3) associate members to the Board. The Chairperson of the Board shall designate which shall serve in place of the absent member.
- D. Neither a Municipal Officer nor his or her spouse or immediate family (grandfather, father, son, daughter, e.g.) may be a member or an associate member of the Board.
- E. 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 three (3) consecutive Board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest".
- F. 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:

- 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 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 other actions as are necessary for the efficient and orderly conduct of hearings, unless directed other wise 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 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; attend to correspondence of the Board; and to other duties as are normally carried out by a secretary. The Secretary shall keep 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. All records are public 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, 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, father, wife, son, grandson, e.g.) or to his employer or the employer of any member of the person's immediate family. A pecuniary interest is defined as doing 10% or more of one's business with the appellant.

Even if no legal conflict of interest exists, a board member would be well advised to avoid even the appearance of a conflict in order to avoid the appearance of impropriety and maintain the public's confidence in the Board's work. Aldom vs. Roseland, 42 NJ Super.495, 127 A.2d. 190 (1956); 30-A MRSA Subsec. 2605.

V. POWERS AND LIMITATIONS:

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

1. The Board may interpret the provisions of any applicable town ordinance which is called into question.
2. The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable Town ordinance.
3. The Board may grant a variance only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words property would cause undue hardship. The words “undue hardship” as used in the subsection mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. The hardship is not a result of action taken by the applicant or prior owner.
4. The Board shall have the power to hear and determine all appeals by any person or legal entity 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 therefore, 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 Shoreland Zoning Ordinance;
 - b. Rendered by the Planning Board or the Selectmen pursuant to the Subdivision Ordinance;
 - c. Rendered by the Selectmen pursuant to the Ordinance for the Regulation and Issuance Special Amusement Permits or 28 MRSA subsection 702 (also relating thereto);
 - g. Rendered by the Selectmen or the Road Commissioner pursuant to the Road and Entrance Design Standards Ordinance;
 - h. Rendered by the Planning Board or the Codes Enforcement Officer pursuant to the Floodplain Management Ordinance
 - i. Rendered by the Code Enforcement Officer or the Planning Board pursuant to the Site Plan Review Ordinance;
 - j. Rendered by the Code Enforcement Officer or the Planning Board pursuant to the Obscenity Ordinance;
 - k. Rendered by the Code Enforcement Officer or the Selectmen pursuant to the Automobile Graveyards and Junkyards Ordinance;

- l. Rendered by the Board of Commissioners or the Selectmen pursuant to the Sewer Use Ordinance; and
- m. Rendered by the Code Enforcement Office or Planning Board pursuant to the Mobile Home Park Ordinance.

VI. MEETINGS

- A. The regular meeting of the Board shall be held annually or as necessary.
- B. The annual organization meeting of the Board shall be the first regular meeting of the year.
- 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.
- D. The Chairperson shall call a special meeting within the 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) 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.
- F. 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 for consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a substantial disadvantage.

VII. VOTING

- A. A quorum shall consist of three (3) 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 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 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 must file such application for appeal, in writing, on forms provided, 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 stamp the date on the original, make a copy, retain the originals and notify the Chairperson of the Board.
- B. The fee to accompany applications for appeal shall be established by the Board of Selectmen. Checks are made payable to the Town of Norridgewock. In addition, the applicant shall be responsible for the cost of publishing two legal notices in a newspaper of general circulation in the municipality and the cost of certified mailings to owners of property abutting that for which the appeal is taken.

IX. HEARINGS

- A. The Board shall hold a public hearing on all appeals applications within thirty-five (35) days of the filing of a completed appeal application.
- B. 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 times, the date of the first publication to be at least seven 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 abutting that for which the appeal is taken at least ten (10) days prior to the date of the hearing.
- 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 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, expert witnesses, employees of parties involved 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. Municipal Officers, 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 the 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 at the initial hearing.
 14. Written testimony may be accepted by the Board seven (7) days after the close of the hearing.
 15. The person(s) filing the appeal shall have the burden of proof.
- E. 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 final hearing.
- 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 therefore, 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 the standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan (if any) and by Findings of Fact by the Board in each case.
- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. The 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 contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.
- F. 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 Office, and the Municipal Officers within seven (7) days of the decision.
- G. 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.
- H. Upon notification of the granting of an appeal or variance or the interpretation of an ordinance by the Board of Appeals, the town official or reviewing authority body shall promptly act in a manner consistent with the Board's decision, unless an appeal is taken therefrom to Superior Court.
- I. A copy of all variances effecting Shoreland Zoning granted by the Board of Appeals shall be submitted to the Maine Department of Environmental Protection within fourteen (14) days of the decision.

XI. CONSIDERATIONS:

- A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within thirty (30) days of its prior decision. A request for reconsideration must be filed within 21 days of the original decision. A meeting to decide whether to reconsider shall be called by the Chairperson in accordance with Article VI of these By-laws. The 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 Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

XII. APPEAL TO SUPERIOR COURT:

- A. The decision of the Board of Appeals may be taken, within forty-five (45) days after the decision is rendered, by any aggrieved party who

participated as a party during the proceedings before the Board of Appeals, and has standing to do so, to Superior Court in accordance with Rule 80B of 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.

XIV. NEW APPEALS:

After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be submitted to, or entertained by, the Board until one (1) year has elapsed from the date of the decision.