

**BOARD OF APPEALS ORDINANCE  
FOR  
DEDHAM, MAINE**

Adopted: 15 Jun 96

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### TOWN OF DEDHAM, MAINE

#### I. CREATION:

A Board of Appeals is hereby established for the Town of Dedham, Maine, pursuant to the provisions of Title 30-A and 38 of the Maine Revised Statutes Annotated (M.R.S.A.) as amended.

#### II. GENERAL PROVISIONS:

A. The term "Board" as used in this Ordinance shall mean the duly appointed Board of Appeals of the Town of Dedham, Maine.

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, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.

### III. APPOINTMENTS:

A. The Board shall consist of five (5) members appointed by the Selectmen of the Town of Dedham for terms of three (3) years.

B. The Selectmen 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.

C. Neither a municipal officer nor his 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 Selectmen before expiration of his/her term, but only after an advertised public 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.

### IV. OFFICERS AND DUTIES:

A. The officers of the Board shall consist of a Chairperson, Vice Chairperson, and Secretary who shall be elected annually by a majority of the Board present.

B. **CHAIRPERSON.** The chairperson shall perform all duties required by law and this Ordinance and preside at all meetings of the Board. The Chairperson shall decide on points of order and procedure, subject to this Ordinance, unless directed otherwise by a majority of the Board present. The Chairperson shall appoint any committees found necessary to carry out the business of the Board. The Chairperson's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.

C. **VICE CHAIRPERSON.** The Vice 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, and shall also keep records of all Board official actions.

E. Should any vacancy on the Board occur for any reason, the Secretary shall give immediate notice thereof to the Town Clerk for the Town Selectmen's action.

F. The officers of the Board shall provide the Selectmen annually with an accounting of all fees collected and all expenditures made by the Board during the previous year.

V. CONFLICT OF INTEREST:

Any question of whether 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 present, with the member whose potential conflict is under consideration abstaining.

VI. POWERS, DUTIES, 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 ordinances which are 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. **Variance.** Except as provided in subsections 4 and 5, The Board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
  - a. The land in question cannot yield a reasonable return unless a variance is granted;
  - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - c. The granting of a variance will not alter the essential character of the locality; and
  - d. The hardship is not the result of action taken by the applicant or a prior owner.

The Board may adopt additional limitations on the granting of a variance, including but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

4. **Disability variance.** 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 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. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, § 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.

5. **Set-back variance for single-family dwellings.** The Board may grant a variance from the set-back requirements for a single-family dwelling that is the primary year-round residence of the petitioner, when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- a. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- b. The granting of a variance will not alter the essential character of the locality;
- c. The hardship is not the result of action taken by the applicant or a prior owner;
- d. The granting of the variance will not substantially reduce or impair the use of the abutting property; and
- e. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
- f. A variance under this subsection may not exceed 20% of the set-back requirement.

B. The issuance of a variance is subject to any specific conditions contained in the applicable Town Ordinance/regulation.

C. In granting a variance, the Board may prescribe such conditions and safeguards as they deem advisable in order to protect public interest, health, safety and general welfare and the purpose of the ordinance.

D. A variance may only be granted for a use permitted in a particular zone and only for lot area, lot coverage by structures, setbacks, and frontages. A variance shall not be granted to permit a use or structure otherwise by ordinance prohibited.

E. The granting of a variance shall not relieve the applicant from obtaining all permits in accordance with applicable State law or local ordinance or regulation.

## VII. MEETINGS:

A. The regular meeting of the Board shall be held once every other month or as necessary.

B. The annual organization 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 each member of the Board, the Selectmen, the Planning Board, and the Code Enforcement Officer.

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:

1. Roll call
2. Reading and approval of the minutes of the preceding meeting
3. Action on held cases
4. Public hearing (when scheduled)
5. Other business
6. 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 the Board at a substantial disadvantage.

#### VIII. VOTING:

A. A quorum shall consist of three 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 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 the affirmative vote of a majority of the membership of the Board present, 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. No member of the Board shall sit in hearing or vote on any matter in which he/she is personally or financially interested. Said member shall not be counted by the Board in establishing the quorum for such matter.

F. No member shall vote on the determination of any matter requiring a public hearing unless he/she has attended the public hearing thereon; however, where such a member has familiarized himself with such matter by reading the record, he/she shall be qualified to vote.

#### IX. APPEAL PROCEDURE:

A. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

B. Such appeal shall be made by filing with the Board a written notice of appeal which includes:

1. A concise written statement indicating what relief is requested and why it should be granted.

2. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

C. Each appeal request shall be accompanied by a fee payable to the Treasurer of the Town of Dedham. The fee to accompany applications for appeal shall be a fee determined by the Selectmen to be sufficient to cover expenses. The fee will be reviewed by the Selectmen at the request of the Chairperson of the Appeals Board, and take effect thirty (30) days from approval.

D. Upon being notified of an appeal, the Code Enforcement officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

E. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request and the appropriate fee.

#### X. HEARINGS:

A. In the event the Board determines to hold a public hearing, it 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 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 Selectmen, the Planning Board, and the Code Enforcement Officer.

B. The order of business at a public hearing shall be as follows:

- (A) Roll call.
- (B) The chairperson shall give a statement of the case.
- (C) The applicant shall present his/her case.
- (D) Those opposed shall present their arguments.
- (E) Rebuttal by both sides.
- (F) Additional cases.
- (G) Adjournment of hearing.
- (H) Call to order of regular meeting, when applicable.

C. The Board may adopt rules, which shall be recorded by the Secretary for any matter relating to the conduct of any public hearing, provided that any rule may be waived by the chairperson upon good cause shown.

D. Every party to the appeal shall have the right to present his/her case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of facts. The Board shall provide as a matter of policy for the exclusion of irrelevant material or unduly repetitious evidence.

E. 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.

#### XI. DECISIONS:

A. The Board shall decide all appeals within thirty (30) days after the close of the hearing.

B. The concurring vote of the majority of the Board membership present and voting shall be necessary to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide under the Ordinance, or to affect any variation in the application of the Ordinance from its stated terms. 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 clearly contrary to specific provisions of the Ordinance.

C. The person filing the appeal shall have the burden of proof.

D. 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 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. Notices of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Planning Board, Code Enforcement officer and the Selectmen within seven (7) days of their decision.

E. The Board, in reaching said decision, shall be guided by standards specified in the applicable ordinance as well as by the community goals and policies as specified in the Comprehensive Plan, and by the findings of the Board in any case.

F. In reviewing an application on any matter, the standards in any applicable local ordinance or state statute shall take precedence over the standards of these

rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

G. Unless otherwise specified, any order or decision of the Board for a permitted use 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 decision; however the Board may extend this time an additional (90) days.

H. 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.

I. Copies of the decision shall be mailed or hand delivered to the applicant, the Planning Board, the Code Enforcement Officer, and the Selectmen within seven (7) days of the decision.

#### XII. APPEAL TO SUPERIOR COURT:

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.

#### XIII. RECONSIDERATION:

The Board may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

#### XIV. EFFECTIVE DATE:

The effective date of this Ordinance or any amendments thereto shall be the day immediately following its/their adoption at a regular or special town meeting.