

BOARD OF APPEALS ORDINANCE

TOWN OF GOULDSBORO

ESTABLISHED JUNE 15, 2005

Section 1: **Establishment and Organization**

There shall be a Board of Appeals created in accordance with 30-A M.R.S.A. Sections 2691 & 4353. The Board shall consist of five members and two alternate members.

The municipal officers of the Town of Gouldsboro shall appoint the members. The members shall be appointed for terms of five years each, such terms to be staggered so that the term of one member shall expire each year. The members of the Zoning Board of Appeals in existence at the time of this amendment shall become the members of the Board of Appeals established by this amendment; the terms of their service shall continue as before.

The alternate member shall act in place of any member who may be unable to act due to conflict of interest, absence, physical incapacity, or any other reason. The municipal officers may dismiss a member of the Board for cause before that member's term expires. Neither a municipal officer nor the spouse of a municipal officer may be a member or alternate member of the Board.

Section 2: **Jurisdiction:**

The Board shall have the following powers:

A. Administrative Appeals. To hear and decide administrative appeals, on a de »ovo basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance, except for a decision of the Planning Board relative to a subdivision application, which shall be appealable directly to Superior Court; and to hear and decide administrative appeals, on a de »avn basis, 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 in his or her review of and action an a permit application under the Ordinance.

(1) Standard of Review / Burden of Proof - The Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence and the law, reach its own decision, and make findings and conclusions in support of its decision. The parties may present transcripts of any testimony presented to the Planning Board as evidence to be considered by the Board of Appeals in order to conserve expenses. For all matters before the Board of Appeals, the person filing the appeal or request shall have the burden of proof.

B. Variance: To authorize in specific cases such variance from the terms of any ordinance which governs the use of land and buildings adopted pursuant to Title 30-A Section 3001 or Title 38 Section 435-449 as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of said ordinance would result in undue hardship. A variance shall apply only to area, yard space, height, setback, or other dimensional requirements, and in no case shall a variance request apply to the use of land or structures. A variance may be granted only if the Board finds that all of the following undue hardship criteria are met:

- (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 of the neighborhood;
- (3) That the granting of a variance will not alter the essential character of the neighborhood; and
- (4) That the hardship is not the result of action taken by the applicant or a prior owner.

Section 3: **Additional Powers and Duties**

The Board shall have the following additional powers:

- A. To interpret the provisions of the ordinance that are called into question in any manner before it;
- B. To approve the issuance of a variance subject to conditions, where those conditions are directly related to the present or future use or division of the property;
- C. To take and hear testimony, to swear witnesses and to compel the presence of witnesses by process; and
- D. To establish such procedures for hearings before it as are not inconsistent with the procedures set forth in Section Seven (7) and State law.
- E. To hear appeals on matters where Board jurisdiction to hear the appeal has been specifically delegated by state law.

Section 4: **General Procedures.**

- A. The chairman shall be elected annually by the Board from its membership. The chairman shall call meetings as required, or when requested to do so by a majority of the members of the Board or by the municipal officers. The chairman shall preside at all meetings of the Board and be the official spokesman of the Board.
- B. The secretary shall be elected annually by the Board from its membership. 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. All records to be maintained or prepared by the secretary are public records, and, they shall be filed in the municipal clerk's office and may be inspected at reasonable times.
- C. A quorum of the Board is necessary to conduct an official Board meeting; a quorum must consist of at least a majority of the Board's members including alternate members. Before an alternate member may act in the place of a member, the chairman shall determine that the alternate member was present at previous Board of Appeals proceedings relevant to the application in question.
- D. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. 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.
- E. The transcript of the testimony, if any, and exhibits, together with all papers and requests filed at the proceeding, constitute the 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. Notice of any decision shall be mailed or hand-delivered to the applicant(s), the Code Enforcement Officer, the Planning Board, and the municipal officers within seven (7) days of the Board's decision.
- F. The Board may reconsider any decision within 30 days of its prior decision. Reconsideration is permissible only if a motion for reconsideration is made, seconded and passed by the Board. The Board may conduct any additional hearings and receive any additional evidence or testimony it deems necessary for its reconsideration. Actions on reconsideration must be completed within the (same) 30 days of the vote on the original decision.

Section 5: **Procedure for Administrative Reviews**

The following procedures shall apply to appeals for Administrative Review conducted before the Board:

- A. An appeal may be taken to the Board by an aggrieved person from any administrative decision of the Code Enforcement Officer (or the Planning Board) within 30 days of the date of the decision appealed from. A decision of the CEO to take enforcement action for violations of an ordinance or any permit issued pursuant to an ordinance, is not appealable to the Board of Appeals. The Board may extend this time period only upon a showing by the person seeking an appeal that there was good cause for the failure to appeal within 30 days of the decision.
- B. An appeal shall be made by filing a written notice of appeal with the Board on forms provided by the town, which includes:
- (1) A sketch drawn to scale showing lot lines, the locations of existing buildings, and other physical features pertinent to the relief requested.
 - (2) A concise statement of the relief requested and why it should be granted.
- C. Upon being notified of an appeal, the Code Enforcement Officer (or the Planning Board, as appropriate,) shall transmit all papers comprising the record of the decision appealed from to the Board. These papers shall be transmitted seven days prior to the scheduled Board of Appeals meeting on the matter.
- D. The Board shall hold a public hearing on the appeal within thirty-(30) days of its receipt of an appeal request. At least seven (7) days prior to the date of hearing on such appeal, the Board shall cause to be published in one issue of a newspaper of general circulation in the Town, and posted at the Town Office, notice that includes:
- (1) The name of the person(s) appealing;
 - (2) The location and description of the property involved;
 - (3) A brief description of the decision from which an appeal is taken; and

The time and place of the hearing. The Board shall, in addition to the notice set forth in subsection D above, give written notice by regular mail or its equivalent to: all abutting property owners within 1000 feet (notice to abutting property owners shall be sent to the owner's address contained in the records of the Tax Assessors), the person(s) making the appeal, the Planning Board, and the Code Enforcement Officer. The names of abutters must be presented and provided by the appellant.

Section 6: **Variance Procedures**

The following procedures shall apply to applications for a variance:

- A. An application for a variance may be made by any person with a possessory, contractual, or other legal or equitable interest in the property. No variance may be granted to any person who does not have such an interest in the property.
- B. An application for a variance shall be made by filing with the Board a written application for a variance that shall include:
- (1) An original or copy of the deed, agreement, option or other instrument showing the applicant's interest in the property;
 - (2) A sketch drawn to scale showing lot lines, the locations of existing and proposed buildings, and other physical features such as septic system locations, well, etc; and
 - (3) A concise statement of the nature of the variance sought.
- C. The Board shall hold a public hearing on the variance request within thirty (30) days of its receipt of the request. At least seven (7) days prior to the date of the hearing on the variance, the Board shall cause to be published in

one issue of the newspaper of general circulation in the Town, and posted at the Town Office, or another conspicuous public place, notice which includes:

- (1) The name of the person(s) seeking the variance;
- (2) The location and description of the property involved;
- (3) A brief description of the nature of the variance sought; and
- (4) The time and place of the hearing.

D. The Board shall, in addition to the notice set forth in subsection C above, give written notice by regular mail or its equivalent to: all abutting property owners (notice to abutting property owners shall be sent to the owner's address contained in the records of the Tax Assessors), the person(s) seeking the variance, the Planning Board and the Code Enforcement Officer.

E. Whenever the Board grants a variance under this ordinance, a certificate indicating the name of the current property owner; identifying the property by reference to the last recorded deed in its chain of title; indicating the fact that a variance, including any conditions on the variance, has been granted; and the date of granting shall be prepared in recordable form and provided to the applicant for recording in the local registry of deeds. The recording of the variance form is the responsibility of the applicant. Variances not recorded within ninety (90) days of the date of being provided to the applicant shall be invalid. No rights may accrue to the variance recipient or his heirs, successors or assigns unless and until the recording is made within said ninety (90) days.

F. If a variance is granted by the Board under the provisions of this article for property located within shoreland areas as set forth in Title 38 Section 435, a copy of all such variances granted by the Board shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

Section 7: **Procedures for Public Hearings**

The following procedures shall be used in the conduct of public hearings conducted pursuant to this section:

- A. The Board shall follow the established procedures outlined below to maintain orderly procedure and to allow each side to be heard. All questions and answers shall be directed through the chairman, and all persons at the hearing shall abide by the order of the chairman.
- B. Any party may be represented by an agent or attorney. The participation of that agent or attorney shall be governed by the procedures established by the Board.
- C. The chairman shall introduce each item of business, but he may ask the secretary or any member to read or summarize the application before the Board. The chairman should then inquire if any member has a conflict-of-interest and wishes to abstain.
- D. The chairman shall then inquire whether the applicant has sufficient standing to present the matter to the Board.
- E. The chairman shall then invite the applicant, or a duly authorized representative, to make an opening statement and to present written evidence or testimony in support of the application.
- F. Any witnesses shall state for the record their names, addresses, business affiliation, and the nature of their interest in the proceeding.
- G. The chairman shall then ask the code *enforcement* officer or Planning Board Member (or other town official) to present their position on the application and to comment on the appellant's evidence and to introduce evidence in support of their position on the matter before the board.
- H. Next, members of the public shall be invited to comment or to present relevant evidence in support of or in opposition to the application.

I. At any time during the public hearing the Board members or Board attorney may direct questions to any person offering evidence to the Board.

J. At the end of the public hearing, but before it is closed, the Board members or Board attorney may direct questions to the applicant or to anyone else who has previously testified or offered evidence.

K. If requested, the chairman may grant the applicant or a member of the public with an opportunity to present evidence in rebuttal to other evidence heard. Rebuttal evidence shall be limited to those matters that were the subject of direct evidence by an opposite party, and no new evidence may be offered without the permission of the chairman.

L. Hearings shall not be continued except upon a showing of good cause.

Section 8: **Decisions of the Board**

A. A concurring vote of at least three (3) members present and voting shall be necessary for the Board to reverse or uphold an order, requirement, decision, or determination of the Code Enforcement Officer or the Planning Board, or to grant a variance.

B. The applicant for the appeal or variance shall bear the burden of proof on all issues.

C. Administrative relief may be granted only where the Board finds that the decision of the Code Enforcement Officer (or the Planning Board) from which appeal is made was clearly contrary to the specific provisions of the relevant ordinance.

D. A variance may be granted only where the Board finds that the applicant has proven each undue hardship criteria requirement by a preponderance of the evidence.

E. The Board shall decide all appeals or variance requests within thirty (30) days after the close of the public hearing.

Section 9: **Appeals to the Superior Court:**

Any party may take an appeal, within forty-five (45) days after the decision is rendered, to the Superior Court from any order, relief or denial by the Board. Such appeal shall be made in accordance with the Maine Rules of Civil Procedure, Rule 80B.

Yvonne P. Wilkinson
Attest
Yvonne P. Wilkinson
Clerk of Gouldsboro

June 15, 2005
Date