

**SUBCHAPTER X - APPEALS**

**SECTION 9-1001** (Reserved)

**SECTION 9-1002** POWERS AND DUTIES

The Board of Appeals, established under Section 2-901, shall have the following powers and duties:

1. Administrative Appeals. The Board of Appeals may, upon application of an aggrieved party, after review of the record, affirm, modify, or set aside a decision, order, rule or failure to act by the Code Enforcement Officer or the Planning Board in the administration of this Chapter, when it is alleged that there was an error of law or findings not supported by substantial evidence in the record, except as follows:
  - A. All enforcement actions taken by the Code Enforcement Officer pursuant to Subchapter IX, including stop orders and administrative consent agreements and all actions relating to the administration and enforcement of Subchapter VIII, may be appealed by an aggrieved party only to the Superior Court pursuant to Rule 80-B of the Maine Rules of Civil Procedure.
2. Variance Appeals. The Board shall hear and decide cases where an applicant seeks a relaxation of the dimensional requirements of the Ordinance for height, lot size, structure size, frontage and setback. Additional conditions and safeguards may be prescribed by the Board upon the applicant so as to minimize any adverse impact as a result of granting the variance. The burden of proof rests with the applicant to demonstrate that the conditions for a variance exist.

The Board of Appeals is prohibited from issuing a variance for a use that is not permitted by this Ordinance.

- A. Undue Hardship Variance. A variance may be granted by the Board for “undue hardship” which shall be interpreted only in strict compliance with all of the following criteria and with the criteria of Title 30-A M.R.S.A. §4353:
  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 (not desired use or personal hardship) and not to the general conditions in the neighborhood.
  3. That the granting of a variance will not alter the essential condition of the locality.

4. That the hardship is not the result of action taken by the applicant or a prior owner.

B. Disability Variance. The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling 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 in the dwelling. For the purposes of this paragraph, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. §4553 and the term “structures necessary for access to or egress from the dwelling” is defined to include, but is not limited to, ramps, lifts, railings, walls or roof systems necessary for the safety, accessibility or effectiveness of the dwelling.

C. Set-Back Variance for Single-Family Dwellings. The Board may grant a set-back variance for a single-family dwelling from a set-back requirement only when strict application of the set-back requirements of this Chapter to the petitioner and the petitioner’s property would cause undue hardship. The term “undue hardship” as used in this subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of abutting property; and
5. The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

The Board is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this paragraph may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

A variance under this paragraph C may be granted only once per dwelling. The provisions of this paragraph C must be strictly construed by the Board.

- D. Practical Difficulty Variance from Dimensional Standards. The Board may grant a variance from the dimensional standards of this Chapter when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:
1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
  2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
  3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
  4. No other feasible alternative to a variance is available to the applicant;
  5. The granting of a variance will not unreasonably adversely affect the natural environment; and
  6. The property is not located in whole or in part within shoreland areas as described in 38 M.R.S.A. §435.

As used in this paragraph, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this paragraph, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to reasonably pursue and/or expand a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

The provisions of this paragraph D must be strictly construed by the Board.

3. Board Review. In deciding any appeal the Board of Appeals may interpret the provisions of the Zoning Ordinance and related State statutes. The provisions of 30-A M.R.S.A. §2691(3) shall govern the procedures of the Board of Appeals with respect to its meetings, hearings, deliberations, and decisions.

[Derivation: Section 7.2, 1989 Zoning Ordinance]

[Derivation: Ordinance No. 06-06, Effective August 17, 2006]

**SECTION 9-1003     APPEALS PROCEDURE**

1.     Filing:

- A.     Administrative Appeals. In all cases, a person aggrieved by a decision of the Code Enforcement Officer or the Planning Board shall commence his appeal within 30 days after the decision is made. The appeal shall be filed with the Code Enforcement Officer on forms approved by the Board of Appeals.
- B.     Variance Requests. A request for a variance may be filed with the Code Enforcement Officer on forms approved by the Board of Appeals, only after a completed application for a building permit has been accepted by the Code Enforcement Officer.
- C.     Fees. A request for an administrative appeal or variance shall be accompanied by a fee of \$25.00 plus the cost of public hearing notices to be published and mailed pursuant to this section as determined by the Code Enforcement Officer.
- D.     If the property is located within the Resources Protection District or Shoreland Overlay District, a copy of the variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Code Enforcement Officer to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

2.     Review: Hearings

- A.     Administrative Appeals: The Board's review, on an appeal from a decision of the Code Enforcement Officer or Planning Board shall be limited to a review of the record that was the basis of the decision, and no additional factual matters may be considered. In the event the record of the Code Enforcement Officer or the Planning Board is determined by the Board to be inadequate for review, the Board may order that the matter be remanded to the applicable decision maker for completion. In any remand order, the Board shall provide written notice of the deficiencies in the record and shall specify a date by which a completed record shall be submitted to the Board. Such date shall be no less than 30 days and no more than 60 days from the date of the remand order. The Board may receive written briefs and hear oral argument from the parties or their designated representatives, but shall not receive or consider new evidence. Notice of the meeting at which an administrative appeal is considered shall be published in the manner provided in paragraph B(1) below.
- B.     Variance Request: The Board shall hold a public hearing on a request for

variance within 30 days after the receipt of a completed application that includes all required exhibits. At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause. Notice of hearing shall be made as follows:

- (1) Publication. The Code Enforcement Officer shall publish notice of the hearing at least 10 days in advance in the Kennebec Journal. The public notice shall contain, at a minimum, the name of the applicant, the location of the property in question, a description of the relief requested, and the date, time and place of the public hearing.
- (2) Mail Notification. The Board shall notify in writing the applicant, land owners of record within 200 feet of the applicant's property, the Planning Board, City Council, and City Solicitor at least 10 days in advance of the hearing by regular mail. The owners of property entitled to notice shall be considered to be those shown on the current City tax records. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board.
- (3) [Repealed]
- (4) [Repealed]
- (5) [Repealed]
- (6) Code Enforcement Officer's Responsibility. The Code Enforcement Officer shall upon receipt of an application for variance or appeal, consult with the Chairman of the Board of Appeals, schedule a hearing, and cause the appropriate notices to be sent. The Code Enforcement officer shall attend all hearings and may present to the Board all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- (7) Written Notice. Written notice of the decision of the Board of Appeals shall be mailed or hand delivered to the appellant, appellant's representative, Planning Board, Code Enforcement Officer, City Council, and City Solicitor within 7 days after the decision is rendered.
- (8) Shoreland Zone. If the property is located within the Resources Protection District or Shoreland Overlay District, the Board shall cause written notice of its decision to be mailed or hand-delivered to the Department of Environmental Protection within seven (7) days of the Board's decision.

8. The Appeals Board may require that an engineer, attorney or consultant review one or more aspects of an application for compliance with this Ordinance or to conduct independent studies or testing, and to advise the Board. It is intended that such review shall be requested only where there may be serious questions concerning methodologies, practices, opinions, or scientific principles presented by the applicant or its experts to meet its burden of proof. The engineer, attorney or consultant shall first establish the maximum cost of such review by written agreement with the City. The applicant shall then deposit with the City an amount equal to the full maximum cost, which the City shall place in an escrow account. The City shall pay the engineer, attorney or consultant from the escrow account and reimburse any remaining balance to the applicant, after final payment. Any interest accrued shall remain with the City.

[Derivation: Section 7.3, 1989 Zoning Ordinance; Ord. No. 01-06, Eff. 5/17/01]

[Derivation: Ordinance 07-03; Eff. March 22, 2007; Ord. No. 11-02b, eff. 8/18/2011]