

**Town of Shirley, Maine  
Board of Appeals Ordinance**

**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 3 members appointed by the municipal officers of the Town of Shirley for 3 year terms. However initial appointments shall be 1,2, and 3 year terms.
- B.** The Board shall consist of 2 alternate members appointed by the municipal officers of the Town of Shirley for 3 year terms. However the initial appointments shall be 1 and 2 year terms.
- C.** A municipal officer or their spouse may not be a member or an associate member of the Board.
- D.** When a member is unable to act because of interest, physical incapacity or absence from the State, the associate member shall act in his stead.
- E.** Any member of the Board may be removed from the Board, for cause, conflict or interest, or missed meetings by the municipal officers before expiration of his/her term, but only after notice and a public hearing. The municipal officers will appoint a new member to fill out the remaining term.

**III. Officers and Duties**

- A.** The officers of the Board shall consist of a Chairperson and Secretary who will be elected annually by 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.
- C. Secretary.** The Secretary, shall keep minutes of all Board proceedings, showing attendance of all present, date, time and place, agenda of all proceedings and showing the vote of each member including failing or absent to vote. Also shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board and shall prepare a complete record from each hearing and meeting. 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. All records are public and may be inspected at reasonable times. All meetings and hearings minutes shall be given to the selectmen at the next scheduled selectmen's meeting. All records are to be kept in the town office.

#### **IV. Conflict of Interest**

Any question of whether a particular issue involves a "conflict of interest" (to mean direct or indirect interest, to include one's immediate family or to his employer or the employer of any member of the person's immediate family) sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

#### **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 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.** The Board may grant a variance only where strict application of any applicable town ordinance or provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this 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 charter 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 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 therefor, 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, Planning Board, or Plumbing Inspector, pursuant to Shoreland Zoning Ordinance;
  - b.** rendered by the Code Enforcement Officer, Planning Board, or Plumbing Inspector relating to building code enforcement, subdivision plan etc. pursuant to any statute or Town ordinance;
  - c.** rendered by the General Assistance Administrator pursuant to the Ordinance for General Assistance Administration or the Maine Statutes relating to general assistance;
  - d.** rendered by the Selectmen or the Assessors pursuant to 36 M.R.S.A. 841 and 30 M.R.S.A. 2060 relating to the abatement of taxes;

- e. rendered by the Selectmen or the Assessors pursuant to the Ordinance for the Regulation and Issuance of Special Amusement Permits or 28 M.R.S.A. 8702;
- f. rendered by the Selectmen or the Road Commissioner pursuant to the Street Design and E-911 Ordinances;
- g. rendered by the Selectmen to the pursuant to the regulating town cemeteries;

## **VI Meetings**

- A. The annual organization meeting of the Board shall be within 90 days of the annual town meeting.
- B. Regular meetings of the Board shall be held as needed.
- C. All meetings shall be posted at the town hall, store and given notification to the selectmen 7 days before the meeting.
- D. The order of business at regular meetings of the Board shall be; roll call, reading and approval of the minutes of the last proceedings, action of held cases, public hearing, other business, and adjournment.
- E. All meetings of the Board shall be open to the public, except executive sessions. All votes and decisions must be made at public meetings.

## **VII Voting**

- A. A Quorum shall consist of 2 members of the Board.
- B. No hearing or meeting of the Board shall be held or no action taken in the absence of a quorum.
- C. All matters shall be decided by vote.
- D. A tie vote or lesser number than the majority shall be considered a rejection of the application under consideration.

## **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 within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal to the appeals board, setting forth the ground for his/her appeal.
- B. The fee to accompany applications for appeal shall be twenty-five (\$25) dollars. Checks are to be made payable to the Town of Shirley.

## **IX Hearings**

- A. The Board shall schedule a public hearing on all appeals requests within (30) days of receipt of letter.
- 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, to be posted in the general store and published in a newspaper of general circulation in the municipality at least 7 days prior to the hearing. 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 20 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 or business at a public hearing shall be as follows;
1. Chairperson calls the hearing to order.
  2. Chairperson determines whether there is a quorum.
  3. 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 and those who might be adversely affected by the Board's Decision. Parties may be required by the Board to consolidate or join their appearance 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, 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 their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
  10. The Appellant may ask questions to 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.
  14. Written testimony may be accepted by the Board for seven days after close of the hearing.

## **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 therefor, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.

**C.** 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.

**D.** 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 this ordinance or unsupported by substantial evidence in the record.

**E.** 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 Officer, and the municipal officers within seven (7) days of the decision.

**F.** 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

**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 ninety (90) days.

## **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 30 days of its prior decision.

**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 thirty (30) Days after the decision is rendered , by any party to Superior Court in accordance with the Maine Rules of Civil Procedure.

## **XIII Severability**

The invalidity of any section or provision of these Bylaws shall not be held to invalidate any other section or provision of these Bylaws.

