

BY-LAWS
TOWN OF WAYNE, MAINE
BOARD OF APPEALS

These bylaws are adopted to govern the affairs of the Board of Appeals (“Board”) of the Town of Wayne, Maine (“Town”) and to establish reasonable rules, policies and procedure for the fair, orderly, and efficient conduct of the proceedings before and business of the Board. These bylaws shall govern the Board's practices and procedures except as otherwise provided by law, and shall be liberally construed so as to accomplish their purpose.

1. Purpose of the Board. This Board is established by the Town of Wayne, Maine Zoning Ordinance (“Ordinance”) and pursuant to Title 30-A, Section 2691 of the Maine Revised Statutes, as amended (“Statute”) for the following purposes:

a. Administrative Appeals – Code Enforcement Officer Decisions. The Board shall hear and decide appeals alleging an error in any order, requirement, decision or determination by the Code Enforcement Officer (“CEO”) in the administration of the Ordinance. The Board does not have authority to hear or decide appeals of CEO enforcement orders.

b. Administrative Appeals. – Planning Board Decisions. The Board shall hear and decide appeals alleging an error in any order, requirement, decision or determination made by the Planning Board regarding its administration of Conditional Use Permits or other permits for which the Planning Board is the issuing authority.

c. Interpretation Appeals. The Board shall act on applications seeking interpretation of issues involving the granting of permits under the Ordinance. Whenever there is uncertainty as to the meaning and/or intent of any part of the Ordinance, the board shall have the power to interpret such parts. The issuing authority shall be governed by the Board's findings in issuing or denying said permits, and may be present at the hearing of the appeal. Notice shall be given to the issuing authority and/or the Selectboard of the hearing date, time and location.

d. Variance Applications. The Board shall act on requests for variances from dimensional requirements of the Ordinance, including, but not limited to, structure height, percent of lot coverage, and setback requirements.

2. Organization.

a. Composition and Appointment. The Board shall consist of five members, appointed by the Selectboard to serve staggered terms of three years, so that no more than two terms expire in any one year. Terms shall expire on June 30 of the last year hereof. If a position on the Board becomes vacant during the term thereof, the Selectboard may fill the vacancy by appointment for the balance of such term.

b. Officers. The Board shall schedule a meeting to take place as soon as practical following the annual town meeting, at which it shall elect from its membership a Chair and Secretary to serve approximate one-year terms until their successors are elected. In the event either such office becomes vacant during such term, the Board shall meet to fill the vacancy for the remaining balance of such term.

i) The Chair shall perform all duties required by law and these bylaws and preside at all meetings and proceedings of the Board. The Chair shall have authority to rule on questions of evidence and procedure, to maintain order and determine the course of proceedings, and to take such other actions as may be necessary and not inconsistent with these bylaws or other law to enable the Board to perform its duties and conduct its affairs in an efficient and orderly manner. The Chair shall call all meetings of the Board and shall set the agenda for each meeting. In the absence of the elected Chair at any meeting or proceeding, a temporary Chair may be elected by the members present.

ii) The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the board and shall maintain those records which are required as a part of the Board's proceedings, all of which shall be a public record except as otherwise provided by law. The Secretary shall be responsible for maintaining 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 minutes shall be sent to all members. Copies of decisions, findings and supporting documents shall be maintained at the Town Office. The Secretary shall be responsible for arranging proper and legal notice of public proceedings and hearings. In the absence of the elected Secretary at any meeting or proceeding, a temporary secretary may be elected by the members present to record and prepare the minutes thereof. The Secretary may rely upon an administrative assistant designated by the Town Manager to maintain such Board records.

3. Meetings.

a. Organizational Meeting. As soon as practical following the annual Town meeting, an organizational meeting shall be scheduled by consensus of the Board members for the purpose of swearing in new members, electing officers and attending to such other administrative matters as the Board deems appropriate,

b. Special Meetings. The Chair shall call meetings to be held from time to time as required to address appeals or variance requests received under the Ordinance or when requested by a majority of the Board members or by the municipal officers. A public hearing required under the Ordinance or by statute may be held in conjunction with a special meeting called to discuss and act upon the matter which is the subject of the public hearing.

c. Notice. Written notice of any meeting of the Board shall be given at least seven days prior of the meeting. Such written notice shall state the time, place, and business of the meeting and shall be given to each member of the Board, the municipal officers, the Planning Board, the Code Enforcement Officer and the applicant, if any is involved. Notice of all Board

meetings shall be given as required by law. The Town Manager or designee will post all Board meeting notices:

- at the Wayne Post Office;
- at the Town Office; and
- on the Town Website.

In addition to the above required notice, notice of any special meeting called for the purpose of conducting a public hearing on or taking other action regarding any Administrative Appeal or Variance Appeal, as described in paragraphs 1(a), 1(b) or 1(d) above shall be given in full compliance with paragraphs 4(A)(iii) or 4(C)(iv) below and in compliance with any additional notice requirements contained in any law or ordinance applicable to the subject matter thereof.

d. Quorum. A quorum shall consist of three members of the Board. No hearing, proceeding, or meeting of the Board shall be held, nor any action taken, in the absence of a quorum, except that in the absence of a quorum those members present may request the Chair to call a special meeting for a subsequent date.

e. Conflicts of Interest. No member may participate or vote in any matter in which the member has a conflict of interest or other disqualification. Any question of whether a member has such a conflict of interest or other disqualification shall be decided by majority vote of the remaining members. If a member has a conflict of interest or other disqualification, said member shall not be counted by the Board in establishing the quorum for any affected matter.

f. Matters Involving Public Hearings. No member shall act on any matter involving a public hearing or public proceeding unless the member has attended the hearing or proceeding thereon or unless the member has stated on the record that the member has familiarized himself or herself with such matter by studying the record.

4. Proceedings Before the Board.

a. Administrative Appeals.

i) Time Frame for Initiating and Appeal. A person aggrieved by a decision of the CEO or Planning Board which comes under the jurisdiction of the Board as described in paragraphs 1(a) or 1(b) above may initiate an administrative appeal before the Board within 30 days after such decision is rendered by the issuing authority. The 30-day period during which an appeal may be initiated begins when the official written notification of decision is issued and signed by the CEO or Planning Board and shall be counted beginning with the next day. If the 30th day occurs on a non-working day for the Town, the final date for filing an appeal shall be the next regular workday for the Town. In the event the action complained of is a “failure to act” by the CEO or Planning Board within the time limits set forth in a controlling law or ordinance, an

appeal may be initiated on or after the day following the expiration of the time limit as set forth in the controlling law or ordinance.

ii) Application for Administrative Appeal. To initiate an administrative appeal the applicant, within the timeframe set forth in the preceding subparagraph, must submit seven copies of a fully completed "Application for Administrative Appeal" and supporting drawings, plans and documents along with payment of an application fee of \$100.00 to the Town Manager or his or her designee. An applicant who prevails in an administrative appeal may apply by letter to the Selectboard for a refund of the application fee. Forms for the Application for Administrative Appeal are available on the Town website (Board of Appeals tab) or may be obtained at the Town Office. Within one (1) working day after receiving an Application for Administrative Appeal, the Town Officials receiving the same shall provide an e-mail notification of the Application for Administrative Appeal to each member of this Board and to the Chair of the board or Town official whose action is being appealed.

iii) Scheduling and Notice of Hearing. The Board shall hold a public hearing on any Administrative Appeal within 30 days following the filing of the Application for Administrative Appeal. The public hearing may be held in conjunction with a meeting at which the Board takes action on the appeal. In addition to notice as provided in paragraph 3(c) above, written notice of the hearing shall be mailed via United States Postal Service, first class mail, at least seven days in advance of the hearing to the owners of property located within 500 feet of the property involved. Such notice shall be mailed to the addresses which appear for such property owners in the assessment records of the Town.

iv) Review Standard for Administrative Appeals. For administrative appeals, the Board shall limit its review on appeal to the record established by the board or official whose decision is the subject of the appeal and to the arguments of the parties. The board may not accept new evidence as part of an appellate review. The Board may reverse or modify the decision of the Planning Board or CEO only upon a finding that the decision is contrary to specific provisions of the Ordinance or is unsupported by substantial evidence in the record.

v) Hearings. The hearing shall be conducted in accordance with the Rules for the Conduct of Public Hearings – Board of Appeals – Town of Wayne, Maine ("Hearing Rules"), which Hearing Rules can be found on the Town Website (Board of Appeals tab) or may be obtained at the Town Office. The Board shall reach a decision of an appeal within 20 days of the public hearing and shall inform in writing, the appellant, CEO, and Municipal Officers of its decision within 7 days of the decision.

b. Interpretation Appeals. Whenever there is uncertainty as to the meaning and/or intent of any part of the Ordinance involving or affecting the granting of permits thereunder, the CEO, Planning Board, Town Officials, or any person involved in or affected by the permitting process under the Ordinance may request the Board to interpret such parts of the Ordinance.

i) Application for Appeal. To initiate an interpretation, appeal the applicant must submit seven copies of a fully completed "Application for Interpretation Appeal"

and supporting drawings, plans and documents to the Town Manager or his or her designee. Forms for the Application for Interpretation Appeal are available on the Town website (Board of Appeals tab) or may be obtained at the Town Office. Within one working day after receiving an Application for Interpretation Appeal, the Town Officials receiving the same shall provide an e-mail notification of such application to each member of this Board and to the CEO, planning Board and Town Officials.

ii) Scheduling and Notice of Hearing. The Board shall hold a public hearing on any Interpretation appeal within a reasonable time following the filing of the application therefor. The public hearing may be held in conjunction with a meeting at which the Board takes action on the appeal. Notice of the public hearing shall be given as provided in paragraph 3(c) above.

iii) Hearings. The hearing shall be conducted in accordance with the Rules for the Conduct of Public Hearings – Board of Appeals – Town of Wayne, Maine (“Hearing Rules”), which Hearing Rules can be found on the Town Website (Board of Appeals tab) or may be obtained at the Town Office. The Board shall reach a decision of an appeal within twenty days following the public hearing and shall inform in writing, the appellant, CEO, and Municipal Officers of its decision within 7 days of the decision.

c. Variance Applications. A person seeking a variance relaxing a dimensional requirement of the Ordinance may submit an application to the Board requesting the same.

i) Permissible Variances. The Board may grant only the following types of variance: (i) variances only from dimensional requirements including, but not limited to, structure height, percent of lot coverage, and setback requirements, and (ii) disability variances as provided in subparagraph (iii) below. Variances shall not be granted for establishment of any uses otherwise prohibited by the Zoning Ordinance.

ii) Circumstances Under Which Variances May Be Granted. The Board shall not grant a variance unless it finds that the proposed structure or use would meet the provisions of the Ordinance, except for the specific provisions which have created the nonconformity from which relief is sought. The Board shall not grant the variance unless it finds that strict application of the Ordinance would result in “undue hardship”. “Undue hardship” means:

- The land in question cannot yield reasonable return unless a variance is granted
- The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.
- Granting the variance will not alter the essential character of the locality, and
- The hardship is not the result of action taken by the applicant or a prior owner.

ii) Disability Variances. The Board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The circumstances discussed in the preceding subparagraph (ii) need not exist for a disability variance to be granted. 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 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 this subparagraph, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. § 4553. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

iv) Application for Variance Appeal. To initiate a variance appeal the applicant must submit seven copies of a fully completed “Application for Variance Appeal” and supporting drawings, plans and documents along with payment of an application fee of \$100.00 to the Town Manager or his or her designee. Forms for the Application for Variance Appeal are available on the Town website (Board of Appeals tab) or may be obtained at the Town Office. Within one working day after receiving an Application for Variance Appeal, the Town Officials receiving the same shall provide an e-mail notification of the Application for Variance Appeal to each member of this Board and to the Chair of the Planning Board or Town official whose action is being appealed.

iv) Scheduling and Notice of Hearing. The Board shall hold a public hearing on any Variance Appeal within 30 days following the filing of the Application for Variance Appeal. The public hearing may be held in conjunction with a meeting at which the Board takes action on the appeal. In addition to notice as provided in paragraph 3(c) above, written notice of the hearing shall be mailed via United States Postal Service, first class mail, at least seven days in advance of the hearing to the owners of property located within 500 feet of the property involved. Such notice shall be mailed to the addresses which appear for such property owners in the assessment records of the Town. In addition to the notice required by the preceding sentence, if the requested variance is to property in the Shoreland Zone (R-4), Resource Protection Zone (R-5), or Village Shoreland Zone (R-6), a copy of the variance request and all supporting information provided by the appellant must be forwarded to the Maine Department of Environmental Protection at least 20 days prior to the hearing.

v) Hearings. The hearing shall be conducted in accordance with the Rules for the Conduct of Public Hearings – Board of Appeals – Town of Wayne, Maine (“Hearing Rules”), which Hearing Rules can be found on the Town Website (Board of Appeals tab) or may be obtained at the Town Office. The Board shall reach a decision of an appeal within 20 days of the public hearing and shall inform in writing, the appellant, CEO, and Municipal Officers of its decision within 7 days of the decision. Copies of all variances granted in the Shoreland Zone (R4), Resource Protection Zone (R-5), or Village Shoreland Zone (R-6) shall be submitted to the Maine Department of Environmental Protection within 14 days of the decision.

d. Reconsideration. The Board may reconsider any decision it has reached on a matter described in subsections 4(a), 4(b), or 4(c) above within 45 days of such decision.

i) Request for Reconsideration. A party to a proceeding may request that the Board reconsider its decision on a matter by filing a written request for reconsideration. A request for reconsideration shall be in the form of a letter describing the decision on which reconsideration is sought and explaining in detail the reasons the requestor believes reconsideration is warranted or necessary. Such request for reconsideration must be delivered to the Town Manager or his or her designee within 10 days following the decision that is to be reconsidered. Within one working day after receiving a request for reconsideration, the Town Officials receiving the same shall provide an e-mail notification of such request to each member of this Board.

ii) Board Action on a Request for Reconsideration. The Board has discretion as to whether or not to entertain a request for reconsideration. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The board may conduct additional hearings and receive additional evidence and testimony as it deems necessary.

5. Waiver, Amendment and Conflict with Laws.

a. These by-laws, or any provision thereof, may be waived on any occasion by majority vote of the Board, unless otherwise provided by controlling law or ordinance.

b. These by-laws may be amended at any time by a majority vote of the Board, provided all Board members receive prior notification of the proposed amendments.

c. The invalidity of any section or provision of these by-laws shall not be held to invalidate any other sections or provisions thereof.

d. Where these by-laws do not address an issue, the Board may fashion its own procedure so long as the procedure is fair and does not conflict with applicable laws or ordinances.

e. Any conflict or inconsistency between these by-laws and any controlling law, statute or ordinance shall be resolved in favor of the law, statute or ordinance.

THESE BY-LAWS as set forth above are adopted by vote of the Board of Appeals, Town of Wayne, Maine at a meeting on August 15, 2022.

Teco Brown

Steve Dodge

Fred Duplisea

Theresa Kerchner

Henry Steck