

Town of Eliot

Board of Appeals By-Laws

1. GENERAL PROVISIONS:

- A. Business of the Board shall be conducted in accordance with Maine Statutes, Town Charter, Town Ordinances, Standards of Conduct, and Robert's 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 will be expected to act upon, as well as with the applicable State statutes. Town Ordinances under the jurisdiction of the Board include:
1. Zoning Ordinance
 2. Subdivision Ordinance
 3. Site Review Ordinance
 4. Growth Management Ordinance
 5. Floodplain Management
- 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 that will ensure that the goals and policies of the plan are preserved and substantial justice is done.
- D. The conduct of the business of the Board shall be in accordance with the "Ordinance Governing Boards, Commissions and Committees." Members of the Board should refrain from discussing, outside of a convened meeting, any information regarding a request before the Board, except that information that is contained in the public notice or available to the public (e.g.: written requests for a variance). "Discussion" in this context includes all forms of communication (written, electronic and oral).
- E. New Member Orientation - Prior to their first meeting, new Board members, both regular and **alternate**, will attend an orientation meeting. The purpose of this meeting will be to explain the functions of the Board. The meeting will be led by the Chairman of the Board, or his/her designate. As part of the discussion, the various official reference materials will be identified and distributed. The list of reference materials includes the following:
1. Handbook for Local Appeals, a Legal Perspective
 2. Ordinance Governing Boards, Commissions and Committees
 3. By-Laws of the Eliot Board of Appeals
 4. Procedural Guidelines for the Conduct of Public Hearings
 5. Board of Appeals "Notice of Decision" Form
 6. **Town of Eliot Municipal Code of Ordinances**
 7. **Town of Eliot Charter**
 8. **Town of Eliot Comprehensive Plan**

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II. APPOINTMENTS:

- A. The Board of Appeals shall consist of five (5) members and two (2) **alternate** members, appointed by the Select Board, serving staggered terms for three (3) years. The Board of Appeals shall elect, annually, a chair, vice-chair and secretary from its membership. A **municipal officer** or his or her spouse shall not serve as a member.

- B. Any member of the Board of Appeals may be removed from that Board, for just cause, by the Select Board before the expiration of his/her term. The member in question has the right to choose an advertised public meeting or executive session of the Select Board, in which to refute specific charges against him/her. The definition for "just cause" shall include failure to attend three (3) unexcused meetings, or voting when that member has a conflict of interest.

- C. When there is a permanent vacancy of either a full or **alternate** member, the Chairperson shall immediately notify the Town Clerk. The Select Board **shall act expediently to appoint a person to serve for the unexpired term.**

III. 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.

- 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 action as necessary for the efficient and orderly conduct of the hearings, unless directed otherwise by a majority of the Board. 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. The Chairperson shall see that the **Land Use Administrative Assistant** arranges proper and legal notice of hearings, and attends to other materials of the Board, if needed.

NOTE: All records are public, and they may be inspected at reasonable times. Original documents, including minutes, shall be filed with the Town Clerk, and copies sent to the Board members.

- 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. **BOARD SECRETARY:** The Secretary, subject to the direction of the Board and Chairperson, shall do a preliminary review of the draft minutes of each meeting, as prepared by the Recording Secretary, for errors or omissions, and present those changes to the Recording Secretary, who shall present the revised draft minutes to the Board for their review and approval at the next meeting. If no recording secretary is present, the Board Secretary shall record the meeting for the Recording Secretary and ensure that any Notice of Decision is prepared in a timely manner to be reviewed by the Chair and sent to the applicant, as required.

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E. RECORDING SECRETARY: The Recording Secretary, who is appointed by the Town Manager, shall attend all meetings of the Board of Appeals. The duties include the recording and transcribing of all proceedings, preparing written draft minutes and sending them to the Board Secretary, who shall review them for errors and return to the Recording Secretary, who will revise the draft minutes, to be reviewed at the next regular meeting of the Board of Appeals. The Recording Secretary shall also prepare any Notice of Decision letter, to be signed by the Chair and sent to the appellant on any appeals within seven (7) days of the meeting date.

F. ALL MEMBERS: All Board members are responsible for regular attendance at meetings and hearings.

IV. POWERS AND LIMITATIONS:

Conflict of Interest: Any member of the Board of Appeals **who** has a conflict of interest with an application may voluntarily step down. If there is a question of a conflict of interest brought by another member of the Board of Appeals, or the applicant, the member may be asked to step down after discussion and a majority vote by all members except the member whose potential conflict is under consideration.

A. The Board shall have the following powers to be exercised only upon receipt of a timely and complete written appeal by an aggrieved party:

1. The Board may interpret the provisions of any applicable Town ordinance which is called into question, and which it has been given jurisdiction to hear.

2. The Board may hear and decide ADMINISTRATIVE APPEALS as set forth in:

a. Chapter 45 §45-46 of the Zoning Ordinance;

b. Chapter 29 §29-8 of the Growth Management Ordinance;

c. Chapter 25 §25-71 of the Floodplain Management Ordinance;

d. Chapter 33 §33-82 of the Site Review ordinance;

e. Chapter 41 §41-69 of the Subdivision Ordinance; and

f. As specified in other Ordinances, which may apply.

3. The Board may hear and decide a specific case where a relaxation of the Ordinance may be affected as set forth in:

a. Chapter 45 §45-49(b) (VARIANCES) and Chapter 45 §45-194(c) (2) (WAIVERS) of the Zoning Ordinance;

b. Chapter 25 §25-72 of the Floodplain Management Ordinance;

c. As specified in other Ordinances, **which may apply.**

B. Expansions otherwise prohibited shall not be allowed by VARIANCE, nor shall a VARIANCE be granted because of nonconformities in the zoning district or uses in adjoining districts.

C. For zoning VARIANCES, the Board shall grant a variance by a majority vote of the members

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only in strict compliance with all of the following criteria (as required by State Law, 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 and not to the general conditions in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and
4. The hardship is not the result of an action taken by the applicant or prior landowner.

NOTE: A variance is not justified unless all elements above are presented. The burden of proof rests with the landowner to prove that above conditions exist. A financial disadvantage or personal hardship is not sufficient to grant a variance, as all variances must relate to a unique feature of the land.

- D. The issuance of a variance is subject to any specific conditions contained in the applicable Town Ordinance/Regulation.
- E. In granting a variance, the Board may prescribe such conditions and safeguards, as seem advisable, in order to protect the public interest, health, safety and general welfare, and the purpose of the Ordinance.

V. MEETINGS:

- A. The regular meeting of the Board shall be held once every month, or as necessary; normally on the third Thursday of the month.
- B. The Chairperson/Vice Chairperson shall, within 14 days prior to a public meeting, present an agenda to the Town office for publication.
- C. **The annual organizational meeting of the Board shall be take place at the first regular meeting of the Board after the Town's Annual Meeting in June, subsequent to the Select Board's action to fill vacancies and their appointment and re-appointment of board, commission, and committee members, as needed, or as soon as possible, thereafter.**
1. The following shall take place:
 - a. Election of the Board Officers; and
 - b. Review of the By-Laws.
- D. Meetings of the Board for unusual or sudden circumstances shall be called by the Chairperson. At least seventy-two (72) hours written notice of the time, place, and business of the meeting shall be given to each member of the Board, the Select Board, the Planning Board, the Town Clerk, and the Code Enforcement Officer.
- E. The Chairperson shall call a Meeting within ten (10) days of receipt of a written request from any three members of the Board, which request shall specify the matter(s) to be considered at such Meeting.

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F. The business at regular meetings shall cover the following items:

1. Roll Call
2. Old Business
3. Public Hearing (when scheduled)
4. Reading and approval of the minutes of the preceding meeting
5. Other matters
6. Adjournment

G. 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 meetings. 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 public knowledge would clearly place the Town or Board at a substantial disadvantage.

H. If a public hearing on the agenda of a regularly scheduled meeting of the Board of Appeals has not been opened by 10:00 PM, then, with the consent of the parties to the action, a motion can be made to reschedule that hearing to the next regularly scheduled meeting of the Board of Appeals. This consent of parties and motion will not be considered the first meeting on the appeal. (adopted 2-18-2010)

VI. VOTING:

- A. A quorum shall consist of three (3) members. All decisions shall be decided by a simple majority vote, except in an administrative appeal, which shall require a concurring vote by at least (3) members.
- 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 to call a Meeting for a subsequent date.
- C. A tie vote, or favorable vote, by less than the majority required by State Law or local ordinance shall constitute a rejection of the application under consideration.
- D. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
- E. If the Board has an alternate member, the Chairperson shall appoint an alternate member to act for a regular member who is:
 - a. disqualified from voting;
 - b. unable to attend the hearing; or
 - c. absent from a substantial portion of the hearing due to late arrival. The **alternate** member will act for the regular member until the case is decided.
- F. If the Board has no **alternate** member, no regular member shall vote on the determination of any matter requiring public hearing unless he/she has attended the public hearing thereon. However, where such a member has familiarized himself/herself with such matter by reading the record, he/she shall be qualified to vote.

VII. APPEAL PROCEDURE:

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- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section IV must file such action for appeal, in writing on forms provided, within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the office of the Code Enforcement Officer, setting forth the grounds for his/her appeal. Upon receiving the application for appeal, the Chairperson of the Board shall be notified by the Town Office.
- B. In any case where the application does not meet the timeliness criterion of thirty (30) days from the granting or denial of a permit, **or a written decision by the Code Enforcement Officer**, or where the Board is not empowered to hear the case by State Statute or Town Ordinance, the Board shall review the case at a public meeting and agree that the case cannot be heard. The Chairperson shall notify the appellant, in writing, of the Board's inability to hear the case.
- C. The Board shall provide, as a matter of policy, for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The order of business at a Public Hearing shall be as follows:
1. The Chairperson shall call the meeting to order.
 2. The Chairperson determines whether there is a quorum.
 3. The Chairperson gives a statement of the case, and reads, for the record, 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:
 - a. In the case where the applicant has another party representing the case, and the applicant is not present, a letter authorizing the party to represent the applicant, signed by the applicant, must be presented to the Board prior to the party presenting the applicant's case
 - b. When the applicant is present at the hearing, his/her verbal authorization shall suffice.
 6. The appellant is given the opportunity to present his/her case without interruption. At the conclusion of the presentation, the Board may ask questions of the appellant.
 7. For administrative appeals, the Code Enforcement Officer is given the opportunity to present the position of the Code Enforcement Officer or Planning Board, as applicable, without interruption. At the conclusion of the presentation, the Board may ask questions of the Code Enforcement Officer.
 8. Interested parties are given the opportunity to present their case. 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. Abutters are given the opportunity to speak first, then parties "at large" may speak. Parties may be required by the Board to consolidate or join their appearances, in part or in whole, if their interests or intentions are substantially similar, and such a consolidation would expedite the hearing. The Select Board, the

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Planning Board, and the Code Enforcement Officer shall automatically be made parties to the proceeding. Other persons attending the hearing, and State, Federal, Municipal and other governmental agencies, shall be permitted to make oral or written statements and to submit oral and written questions through the Chair. The interested parties may ask questions of the appellant (and, in administrative appeals, the Code Enforcement Officer), through the Chair.

9. The appellant is given the opportunity to rebut statements made by other parties and provide any additional testimony. The appellant may ask questions to the interested parties and Board witnesses, through the Chair.
 10. For administrative appeals, the Code Enforcement Officer is given the opportunity to rebut statements made by other parties and provide any additional testimony. The Code Enforcement Officer may ask questions to the appellant, Board witnesses, and interested parties, through the Chair.
 11. Abutters are given the opportunity to rebut statements by other parties and provide any additional testimony. Abutters may ask questions to the appellant and Board witnesses, through the Chair.
 12. The appellant (and, in administrative appeals, the Code Enforcement Officer) may make summary statements.
 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, and the reason for the continuance. These parties shall give the secretary their mailing address for notification of the next meeting. If a decision has not been reached, written testimony may be accepted by the Board for seven (7) days after the close of the hearing. All written testimony shall be available for public inspection at the municipal offices during normal business hours. Board members, and the Board's consultants, have the right to submit proposed findings and conclusions at any Board of Appeals meeting prior to the decision being finalized.
- E. The Board may waive any of the above appeals procedures upon good cause shown.

VIII. DECISIONS:

- A. Decisions of 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.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable ordinance and by the findings of the Board in each case.
- D. 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 by-laws whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

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- E. Notice of any decision shall be sent by mail or hand-delivered to the applicant, his representative, or agent, **and** the Planning Board, the Code Enforcement Officer, and the Select Board 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. Any decision granted by the Board shall be invalid if it is not recorded by the applicant at the Registry of Deeds within ninety (90) days of the decision, and a certified copy returned to the Code Enforcement Officer of the Town of Eliot.

IX. RECONSIDERATIONS:

- A. The Board may reconsider any decision reached under this section within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is to be reconsidered. 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 provided in this subsection, but only if:
 - 1. The record contains significant factual errors due to fraud or mistake regarding the facts upon which the decision was based; **or**
 - 2. The Board misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction; or
 - 3. If a second application for a variance on property, where a variance was previously denied, is substantially different from the previous one.
- B. Computation of Time-"the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event, the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation."

X. APPEALS TO SUPERIOR COURT:

- A. The decision of the Board of Appeals may be taken within forty-five (45) days after the decision is rendered, by any party to Superior Court in accordance with 30-A M.R.S.A. §2691 (3)(g).
 - 1. Within forty-five (45) days shall mean from the time the decision is rendered at the public meeting.

XI. AMENDMENTS:

- A. These By-Laws may be amended by a majority vote of the Board.

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1. Amendments become effective immediately after the majority vote.
2. The Chairman shall notify, in writing, all Board members, the Planning Board, the Code Enforcement Officer, the Town Clerk, **the Town Manager**, and the Select Board of said amendments.
3. Amendments shall be attached to the original By-Laws that are kept in the Town Office.

XII. SEVERABILITY:

- A. The invalidity of any section or provision of these By-Laws shall not be held to invalidate any other section or provision of these By-Laws.

ADOPTED BY THE BOARD OF APPEALS

5/18/18

DATE



CHAIRPERSON

