

Article 10
Board of Appeals

Section 1001. Organization

1001-1. CREATION OF BOARD.

The City of Saco Zoning Board of Appeals, hereinafter the “Board”, is hereby created which Board shall consist of seven regular members and two alternates, who shall be appointed by the Mayor, subject to confirmation by the City Council, none of whom shall hold any elective office or any other appointive position in the City government. The Board shall elect a chairman and a secretary from its members.

(Amended 10/3/88; 6/6/16)

1001-2. QUORUM.

A quorum shall consist of four (4) members, at least two of whom shall be regular members. All decisions concerning Board action shall consist of a simple majority vote by the members present at a meeting, but under no circumstances shall fewer than three (3) members constitute a majority vote. Alternates shall vote only in the absence of regular members. In the event of absence of a regular member or member(s) the alternate who has served the longest time shall fill the first vacancy and the alternate who has served the second longest time shall fill the second vacancy. In the event that both alternates shall have served the same period of time, selection of an alternate to fill the vacancy shall be by lot. (Amended 10/3/88)

1001-3. QUALIFICATIONS (Amended 6/6/16)

1. Only residents of Saco may serve as a member of the Board.
2. There shall be no more than two members on the Board who are residents of the same ward.
3. No City Council member, nor any spouse of a City Council member, may be a member of the Board.

Section 1002. Terms of Office; Vacancies (Amended 6/6/16)

1002-1. TERMS.

The term of the appointive members shall be five years and terms shall be staggered with twelve (12) month intervals. Any vacancy during the unexpired term of an appointive member shall be filled in the same manner for the remainder of the term.

1002-2. VACANCIES

1. Vacancies on the Board shall be created under any of the following circumstances:
 - a) a member submits their resignation in writing to the Mayor
 - b) a member's official residence is no longer within the City of Saco, in which instance the secretary of the Board shall notify in writing the Mayor
 - c) upon expiration of the term of a member
 - d) a member fails to attend three or more consecutive meetings of the Board, without being excused by the Board
2. In the case of vacancies occurring in the manner described in paragraph (d) above, the Chairman of the Zoning Board of Appeals shall first contact the absent member to determine their ability to attend future hearings on a regular basis, and the Board shall then recommend appropriate action to the City Council.
3. Any vacancy during the unexpired term of an appointive member shall be filled by a person appointed by the Mayor for the unexpired term.
4. Any member of the Board may be removed for cause by the City Council provided that the member shall first be notified in writing and given the opportunity for a hearing.

Section 1003. Powers and Duties. (Amended 6/6/16)

The Zoning Board of Appeals, shall hear the following matters:

1003-1. ADMINISTRATIVE APPEALS.

An aggrieved party may appeal a decision of the Code Enforcement Officer regarding a zoning violation, a building permit or a certificate of occupancy in those cases where it is alleged the Code Enforcement Officer has made an error of law, or has abused their discretion, or the evidence of record compelled a different decision. An aggrieved party may also appeal to the Board if a permit holder has meaningfully exceeded the authority contained in their building permit or their certificate of occupancy. Any appeal filed hereunder must be brought within 30 days of the alleged act, action or failure to act. This provision is intended to effectuate process set out by the Legislature in Title 30-A, Section 2691 (4). The appeal review shall be de novo as set out below in Section 1004-6. The Board may affirm or reverse the decision of the Code Enforcement Officer, and that decision may be appealed as set out in Section 1005.

1003-2. PLANNING BOARD APPEALS.

Article 10 - Board of Appeals

To hear appeals of decisions by the Planning Board on applications for conditional use permits, subject to the limitations of Section 901 of this Ordinance. Pursuant to Section 901-10, the appeal review shall not be de novo. The Zoning Board shall not have jurisdiction or authority to hear appeals from site plan decisions made by either the Planning Board or the City Planner. The Board may affirm or reverse the decision of the Planning Board on appeal, or, it can order, not more than one time, a remand to the Planning Board for further consideration.

1003-3. IN GENERAL; VARIANCES FROM DECISIONS BY CODE ENFORCEMENT.

The Board shall have authority to approve, approve with conditions, or deny applications for variances from decisions made by the Code Enforcement Officer regarding standards of this Ordinance as allowed under Section 902.. The review conducted by the Board on such variances shall be de novo as set out below in Section 1004-6. Such decisions by the Board may be appealed as set out in Section 1005.

All variances, including those described here, and in Sections 1003-4 and 1003-6 below, shall meet the requirements and conditions set out in Section 902. (Amended 3/2/87)

1003-4. VARIANCES FROM HISTORIC PRESERVATION CONDITIONS.

The Board shall have authority to approve, approve with conditions, or deny applications for variances as further detailed in Section 413-13 of this Ordinance. The review conducted by the Board shall be de novo as set out below in Section 1004-6 below.

1003-5. APPEALS FROM HISTORIC PRESERVATION COMMISSION.

To hear appeals of decisions made by the Historic Preservation Commission under Section 413-10-5. A decision by the Historic Preservation Commission on an application for a Certificate of Appropriateness may be appealed in writing to the Zoning Board of Appeals within 30 days of the Commission's decision. The Board may affirm the decision, or it may reverse the Commission's decision upon a finding that there has been an error of law or that the facts leading to the decision of the Commission were erroneous. The review made by the Board shall not be de novo. (Amended 3/2/87; 3/18/91). If the Board reverses the decision of the Commission, it shall be remanded to the Commission for further consideration, but not more than once. Thereafter, the parties shall have their appeal rights as allowed under Section 1005.

1003-6. SHORELAND AND NATURAL RESOURCE DISTRICT VARIANCES
(Amended 6/6/16)

The Board shall have authority to approve, approve with conditions, or deny applications

for a variance from Shoreland and Natural Resource standards set out in Section 7.1-1 of this Ordinance. The review conducted by the Board shall be de novo as set out in Section 1004-6 below.

Section 1004. Procedures

1004-1. DENIAL OF BUILDING PERMIT.

All applicants for building permits denied for any reason shall be advised in writing of the right of appeal.

1004-2. APPLICATION FOR A VARIANCE AND FILING OF AN APPEAL.

- (1) An appeal or application for a variance shall be commenced as set forth below in Section 1004-4.
- (2) Such appeal or application for a variance shall include the following information:
 - (i) A concise written statement indicating what relief is requested and why it should be granted.
 - (ii) A description of the regulation, ordinance provision, or permit that is subject to review or from which relief is requested.
 - (iii) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
 - (iv) If applicable, a demarcation on the sketch showing low tide and mean high tide and designating the 100 year flood area, any applicable wetlands, shorelines, or other pertinent natural features.
 - (v) If applicable, color pictures of the exterior features at issue if the appeal or variance is of, or concerns, a structure found in the Historic District.
- (3) Upon being notified of an appeal or of an application for a variance, the Code Enforcement Officer and the Board Clerk shall arrange to secure and transmit to the Board all of the papers and evidence constituting the record of the decision that is to be reviewed.

1004-3. PUBLIC HEARING REQUIRED

1. For all appeals from decisions of the Code Enforcement Officer, for all requests for any variance, and for review of the decisions of the Planning Board on applications for conditional use permits, the Board of Appeals shall hold a public hearing, but the Board shall only take and hear new evidence or testimony in those matters where de novo review is expressly permitted. The Hearing shall be held within 35 days of the receipt of an appeal or application for variance.
2. The Board shall cause public notice to be posted and published in both the city building and at least one newspaper of circulation in the area, of any public hearing which the Board shall conduct, indicating the property involved, the nature of the appeal, and the time and place of the public hearing.
3. The Board shall also cause to have notified all property owners of within six hundred (600) feet of the property when the applicant's property is located in the Conservation District, and Industrial District or R-1, R-2, and R-4 Districts and within 200 feet when the applicant's property is located in the R-3 District or any business district. The Board shall cause a list of such property owners to be drawn off from the Assessor's records, and such notices to property owners shall be sent by mail at least seven (7) days prior to the date set for the public hearing.
4. The Board shall not continue hearings to a future date except for good cause. Written notice of the decision of the Board shall be sent to the appellant and the Code Enforcement Officer.

1004-4. TIME FOR APPEAL, FORMS AND FEES.

When a person is aggrieved by a decision of the Code Enforcement Officer, by a decision of the Historic Preservation Commission, or by a decision of the Planning Board, if an appeal or variance application is authorized elsewhere under this Ordinance, the aggrieved person must file their appeal or variance application within thirty (30) days of the day the decision was rendered. Appeals and applications for variance must be filed with the Clerk of the Board on those forms provided for that purpose by the Clerk of the Board. The Clerk of the Board, after receiving the application and stamping the date of receipt shall transmit the application to the Board of Appeals.

Any appeal or application for variance to the Board of Appeals shall be accompanied by a fee as established by the City Council. (Amended 4-3-86)

| 1004-05. RULES OF PROCEDURE. (Amended 6/6/16)

Article 10 - Board of Appeals

The Board shall adopt its own rules of procedure for the conduct of its business not inconsistent with this Ordinance and the statutes of Maine. Such rules shall be filed with the Board Secretary and the City Clerk. Any rule so adopted and not mandated by this Ordinance or the statutes of Maine may be waived by the Chairman of the Board for good cause shown.

1004-6. SUBMISSION OF EVIDENCE. (Amended 6/6/16)

Provided the Board's review is not otherwise limited by this Ordinance including Section 1003-2 and 1003-5, the Board may receive any oral or documentary evidence including new evidence and testimony, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every party shall have the right to present his own case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

1004-7. PRESENCE OF CODE ENFORCEMENT OFFICER. (Amended 6/6/16)

The Code Enforcement Officer, unless prevented by illness or absence from the state, shall attend all hearings and shall present to the Board of Appeals all plans, photographs or other factual material that is appropriate to an understanding of the appeal.

1004-8. CONFLICT OF INTEREST.

No member of the Board shall vote on a matter in which they have a direct or indirect financial or personal interest. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is either requesting a decision, or who is being challenged.

1004-9. RECORDS AND DECISIONS

1. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary shall be 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 deemed public, shall be filed in the municipal clerk's office and may be inspected at reasonable times.
2. 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 therefore, upon all the material issues of

fact, law or discretion presented and the appropriate order, relief or denial thereof.

3. Notification of decision. The City Clerk, Planning Board, and Building Inspector shall be notified in writing within seven (7) days of all decisions of the board. Written notice to the appellant shall be sent within seven (7) days after the date of the decision. The notice shall include, as every decision of the board shall include, findings of fact; shall refer to the evidence in the record and the exhibits, plans, or specifications upon which such decision is based; shall specify the reason or reasons for such decision; and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denied.

Section 1005. Appeals.

Decisions of the Zoning Board of Appeals may be appealed to Superior Court in accordance with State Law.

Section 1006. Reapplication.

If the Board of Appeals shall deny an appeal, a second request of a similar nature shall not be brought before the board within two years from the date of the first request, unless in the opinion of a majority of the board, substantial new evidence can be brought forward, or unless the board finds, in its sole and exclusive judgment, that an error of law or misunderstanding of facts has been made, or unless amendment has been made to the Zoning Ordinance which changes the status, circumstances, or conditions of the matter which was appealed.