

**Article 10**  
**Board of Appeals**

**Section 1001. Organization**

1001-1. CREATION OF BOARD.

The City Zoning Board of Appeals 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)

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

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

**Section 1002. Terms of Office; Vacancies**

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 his 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 hearings 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 his 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.**

The Zoning Board of Appeals, after public hearing and by a majority vote of its members, shall have the following powers and duties:

**1003-1. ADMINISTRATIVE APPEALS.**

To affirm, modify, or set aside the action of the Building Inspector in issuing or denying building permits or certificates of occupancy when it is alleged that the action is based on an erroneous interpretation of this Ordinance.

**1003-2. PLANNING BOARD 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.

**1003-3. VARIANCES.**

To approve, approve with conditions, or disapprove appeals for variances from the strict enforcement of the provisions of this Ordinance as they relate to the space and bulk requirements of the district regulations, according to the standards set forth in Article IX of this Ordinance, and to approve, approve with conditions or disapprove appeals for variances under Section 413-13. (Amended 3/2/87)

**1003-4. (Reserved)**

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 of Appeals may reverse the Commission's decision only 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 of Appeals shall not be de novo. (Amended 3/2/87; 3/18/91)

1003-6. SHORELAND VARIANCES

1. Appeal Procedure

a. Making an Appeal from a decision of the Code Enforcement Officer

- (1) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.
- (2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - (i) A concise written statement indicating what relief is requested and why it should be granted.
  - (ii) 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.
- (3) Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision
- (4) The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

b. Making an Appeal from the Planning Board.

An appeal of a decision by the Planning Board shall be to Superior Court within thirty (30) days of the date of decision appealed from.

c. Standing and Time for an Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals or the Planning Board may take an appeal to Superior Court in accordance with

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State laws within thirty (30) days from the date of issuance of a written decision of the Board of Appeals or Planning Board as appropriate. (Amended 4-21-92)

**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. HEARING REQUIRED

1. For all appeals from decisions of the Building Inspector for consideration of application for permits authorized by the Zoning Ordinance, or from the decisions of the Planning Board on applications for conditional use permits, the Board of Appeals shall hold a public hearing.
2. The Board of Appeals 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 of Appeals 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 Building Inspector.

1004-3. TIME FOR APPEAL, FEE.

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

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

1004-04. RULES OF PROCEDURE.

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.

1004-5. SUBMISSION OF EVIDENCE.

The Board may receive any oral or documentary evidence, 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.

1004-6. 1004-4PRESENCE OF BUILDING INSPECTOR.

The Building Inspector, 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.

1004-7. CONFLICT OF INTEREST.

No member of the Board shall vote on a matter in which he has a direct or indirect financial 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 being challenged.

1004-8. 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

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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.