

**2022 Amendments to the Board of
Appeals Ordinance
Of the
Town of Readfield, Maine**

ENACTED: _____

CERTIFIED BY: _____

Signature

CERTIFIED BY: _____

Printed Name

Title

**Board of Appeals Ordinance
of the
Town of Readfield, Maine**

TABLE OF CONTENTS

| | | |
|-----|---------------------------------|----|
| 1. | GENERAL PROVISIONS | 1 |
| 2. | ESTABLISHMENT | 1 |
| 3. | APPOINTMENTS | 1 |
| 4. | OFFICERS AND DUTIES | 1 |
| 5. | CONFLICT OF INTEREST | 2 |
| 6. | STANDARD OF REVIEW | 2 |
| 7. | POWERS AND LIMITATIONS | 3 |
| 8. | MEETINGS | 5 |
| 9. | VOTING | 6 |
| 10. | TIME LIMIT | 6 |
| 11. | SUBMITTALS | 6 |
| 12. | RECORD OF CASE | 7 |
| 13. | HEARINGS | 7 |
| 14. | DECISIONS | 8 |
| 15. | RECONSIDERATIONS | 9 |
| 16. | RECORDING OF VARIANCES | 9 |
| 17. | APPEAL TO SUPERIOR COURT | 10 |
| 18. | CONFLICTS WITH OTHER ORDINANCES | 10 |
| 19. | SEVERABILITY | 10 |
| 20. | ABROGATION | 10 |

1. GENERAL PROVISIONS:

- A. This Ordinance shall be known and may be cited as the “Board of Appeals Ordinance” and will be referred to herein as this Ordinance.
- B. The purpose of this Ordinance is to reauthorize the Board of Appeals, define its authority and responsibilities, establish its organizational characteristics and set forth procedures for the conduct of its business. The Board of Appeals will be referred to herein as the Board.
- C. 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, including but not limited to those referenced in Section 6 of this Ordinance, as well as with the applicable state statutes as enumerated below in section 7: Powers and Limitations.
- D. It shall be the responsibility of the Board to become familiar with the Comprehensive Plan.

2. ESTABLISHMENT

The Town of Readfield hereby has established a Board of Appeals in accordance with 30-A MRSA § 2691. The Board of Appeals existing at the time of adoption of this Ordinance shall continue to serve as the Board of Appeals.

3. APPOINTMENTS

- A. Unless otherwise specified in this section the filling of vacancies, appointments, and reappointments to the Board shall be consistent with the Town of Readfield Procedures for Appointment and Reappointment.
- B. The Board shall consist of seven (7) members appointed by the Select Board of the Town of Readfield for three-year staggered terms. ~~At the effective date of this ordinance, the current Board shall be reestablished and current members shall continue to serve until each term expires.~~
- C. Neither a Select Board member nor his or her spouse or domestic partner may be a member of the Board.
- D. Any member of the Board may be removed from the Board for cause by the Select Board before expiration of his/her term at a duly noticed hearing.

4. OFFICERS AND DUTIES

- A. The officers of the Board shall consist of a Chairperson, Vice Chairperson and Secretary, from its membership who shall be elected annually by a majority of the Board.

- B. The chairperson shall perform all duties required by law and these bylaws 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, 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.
- C. 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. The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every motion, or if absent or failing to vote, indicating such fact. The ~~Secretary~~ Town Clerk or designee 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. The ~~Secretary~~ Town Clerk or designee shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and shall prepare a complete record of each hearing, including: date(s), time(s), place(s) of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusions; the decision of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.
- E. The Board may adopt additional rules to govern the conduct of its meetings and public hearings. Such rules shall be adopted or amended only by formal vote of the Board after a public hearing on the proposal. Any rules adopted by the Board shall be in writing and shall be available to applicants and the public.

5. CONFLICT OF INTEREST

- A. 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 whose potential conflict is under consideration.
- B. The term conflict of interest shall be as defined in the Town of Readfield Conflict of Interest and Recall Process Ordinance.

6. STANDARD OF REVIEW

- A. All appeals from a decision, determination, or requirement of the Code Enforcement Officer shall be conducted “de novo.” The Board shall conduct a fact-finding hearing at which it may receive and consider evidence and testimony and oral or written argument in addition to the record of the action taken by the Code Enforcement Officer and, based on all the evidence presented to the Board, shall decide whether the action of the Code Enforcement Officer constituted an error of law, misinterpretation of the Land Use

Ordinance, or misapplication of the law to the facts.

- B. Appeals from decisions of the Planning Board shall be strictly “appellate” proceedings. Such review is limited to the record of the proceedings before the Planning Board, and the Board shall not receive or consider any evidence which was not presented to the Planning Board, but the Board may receive and consider oral and written argument. If the Board determines that the record of the Planning Board proceedings is not adequate, the Board may remand the matter to the Planning Board for additional fact finding. The Board shall not substitute its judgment for that of the Planning Board on questions of fact.

7. POWERS AND LIMITATIONS

- A. Upon receipt of a written appeal by an aggrieved party, the Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, with respect to any license, permit, waiver, ~~variance~~, or other required approval, or any application therefore, including the grant, conditional grant, denial, suspension, or revocation of any such license, permit, waiver, ~~variance~~ or other approval (hereinafter a “Decision”)

- 1. rendered by the Code Enforcement Officer or the Planning Board pursuant to the Land Use Ordinance, which shall include any ordinances relating to land use adopted by reference as a part of the Land Use Ordinance;
- 2. rendered by the Select Board Pursuant to the Mass Gathering Ordinance;
- 3. rendered by the Select Board pursuant to any Special Amusement Ordinance or 28-A M.R.S.A. §1054 (relating to the issuance of special permits for music, dancing or entertainment).

B. Variance Applications

- 1. Subject to the limited scope set forth in 7(B)(4), ~~The~~ Board of Appeals shall hear and decide specific cases where a relaxation of terms of the Land Use Ordinance would not be contrary to the public interest, and where, owing to conditions peculiar to the property and not to the neighborhood locale, and to conditions not the result of actions of the applicant or any predecessor in title, strict application of the Land Use Ordinance to the applicant and the applicant’s property would result in undue hardship. For purposes of this subsection “undue hardship” means:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted; and
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and

- c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
2. A financial hardship shall not constitute grounds for granting a variance.
3. Convenience to the applicant shall not constitute grounds for granting a variance. Further, applicants shall demonstrate that no other feasible alternative to his/her proposal is available.
4. As used in the Land Use Ordinance, a variance is authorized only for height, setback, lot area, or dimensional requirements. Establishment or expansion of uses otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the land use district or uses in adjoining land use districts.
5. The Board shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of the Land Use Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The owner of record shall comply with any conditions imposed.
6. A copy of each variance request involving property within the Shoreland Districts, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board. Any comments received from the Commissioner prior to the action by the Board shall be made part of the record and shall be taken into consideration by the Board.
7. Any variance shall expire unless following issuance of same, there is compliance with Article 4, Section 7 of the Land Use Ordinance.

C. Disability Variance for a Building

1. The Board may grant a variance to an owner of a dwelling unit for the purpose of allowing equipment and structures necessary to make the dwelling on that property accessible to any person with a disability who regularly uses such dwelling.
2. 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 persons with disabilities who regularly use such dwelling unit.

3. 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 or regularly uses the dwelling.

D. Setback Variance for Single-Family Dwellings

1. Subject to the limited scope set forth in 7(B)(4), The Board may permit a variance from setback requirements for a single-family dwelling which is the primary year-round residence of the applicant or its accessory structure(s) upon finding that strict application of the Land Use Ordinance to the applicant's property would create undue hardship, defined for purposes of this subsection only as follows:
 - a. The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - b. The granting of a variance will not alter the essential character of the locality;
 - c. The hardship is not the result of action taken by the applicant or a prior owner;
 - d. The granting of the variance will not substantially reduce or impair the use of abutting property;
 - e. The granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
2. The Board may not grant a setback variance for a single-family dwelling under this subsection if the result would be to exceed the lot coverage ratio allowed in the district. Minimum setback from a waterbody or wetland may not be reduced under this subsection. Minimum front, side, and rear setbacks may be reduced by more than 20% under this subsection only if the applicant has obtained the written consent of any affected abutting landowner.

8. MEETINGS

- A. The regular meeting of the Board shall be held once every other month or as necessary.
- B. The annual organization meeting of the Board shall be the first regular meeting of the fiscal year.
- C. Special meetings of the Board may 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, and the Code Enforcement Officer.
- D. The Chairperson shall call a special meeting within ten (10) days of receipt of a written request from any four (4) members of the Board; which request shall specify the matters

to be considered at such special meeting.

- E. The order of business at regular meetings of the Board shall be as follows: (A) roll call; (B) reading and approval of the minutes of the preceding meeting; (C) action on held cases; (D) public hearing (when scheduled); (E) other business; (F) adjournment.
- F. 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 meeting.

9. VOTING

- A. A quorum shall consist of four (4) members of the Board physically present at the meeting.
- 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 special meeting for a subsequent date.
- C. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of at least four (4) members of the Board unless otherwise specified herein.
- D. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
- F. No member shall vote on the determination of any matter requiring a public hearing unless he or she has attended the public hearing thereon; except that such a member who has familiarized himself or herself with such matter by reading the record shall be qualified to vote.

10. TIME LIMIT

Any person aggrieved by an action which comes under the jurisdiction of the Board must file such application for appeal within forty five (45) days of the date of the decision being appealed. The applicant shall file this appeal at the office of the Town Clerk, setting forth the grounds for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board.

11. SUBMITTALS

- A. Appeals and variance requests shall be made by filing with the Board a written notice on forms provided by the Town, which shall at a minimum includes:

1. A concise written statement indicating what relief is requested and why it should be granted.
2. 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 requested.
3. Any additional documents that the applicant believes are pertinent to the appeal.

B. Each application for appeal shall be accompanied by the appropriate fees as established from time to time by the Select Board. In addition to the application fee, the appellant shall be required to pay reasonable mailing and public notice fees associated with the processing of the appeal.

12. RECORD OF CASE

Upon being notified of an appeal, the Code Enforcement Officer, or Town Clerk in the case of appeal of a decision of the Select Board under the Mass Gathering Ordinance, or a Special Amusement Ordinance, or 28-A M.R.S.A. §1054 (relating to the issuance of special permits for music, dancing or entertainment), shall transmit to the Board copies of all of the papers constituting the record of the decision being appealed.

13. HEARINGS

- A. The Board shall schedule the date and time of a public hearing on all appeals or variance applications within thirty (30) days of the filing of a complete ~~appeal~~-application, and shall initiate said hearing within sixty (60) days of the filing of a complete application.
- 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 and to be published in a newspaper of general circulation in the municipality at least ten (10) days prior to the hearing. The Board shall also cause notice of the hearing to be given to the Select Board, the Planning Board, the Code Enforcement Officer, and by first-class mail to the owners of property abutting that for which the appeal is taken at least ten (10) days prior to the date of the hearing. A Certificate of Mailing shall be obtained from the postal clerk at the time of mailing and shall be retained as a part of the official records of the appeal.
- 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, unless the Board votes to modify the order:
 1. The Presiding Officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. The appellant (in the case of an appeal) or the applicant (in the case of a variance request) shall present its affirmative case, including any exhibits or testimony in the event of a de novo proceeding.
3. Members of the Board may direct questions to the appellant/applicant or to any of its witnesses.
4. The Code Enforcement officer, the Planning Board, Ppersons owning land adjacent to the appellant/applicant (hereinafter referred to as “abutters”); and any other persons who can establish that they might be adversely affected by the outcome of the appeal/application may make presentations.
5. Members of the Board may question abutters and any other persons who are permitted to make presentations.
6. The appellant/applicant may present evidence and/or argument in rebuttal to presentations made by others.
7. The Presiding Officer shall declare the hearing closed and the Board will begin its deliberations.

14. DECISIONS

- A. The Board shall render a final decision on an appeal/application by public vote taken no later than ten (10) days after the close of the hearing.
- B. The Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan, and by findings of fact by the Board in each case.
- C. The Board’s final decision on any matter shall be confirmed by written decision signed by the Chairperson, which written decision shall include reference to the reconsideration process and the right to appeal to Superior Court. 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 and the appropriate order, relief, or denial thereof.
- D. The appellant or applicant shall have the burden of proof.
- E. 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.
- F. Notice of written decision shall be sent by ~~certified electronic mail~~, ~~or~~ registered mail, or hand delivered to the applicant, his representative or agent, the Planning Board, the Code

Enforcement Officer, and the Select Board within seven (7) days of the decision. For decisions regarding development in shoreland districts, the Board shall send such written decisions to the Department of Environmental Protection within seven (7) days of the Board's decision.

- G. Decisions of the Board shall be immediately filed in the office of the Town Clerk and shall become a part of the appropriate record. In instances where the Board remands a case to the Planning Board or Code Enforcement Officer, such decisions shall include an appropriate order. The date of filing of each decision shall be entered in the official records and minutes of the Appeals Board.
- H. Any order or decision of the Board for a permitted use shall expire if the permit is not acted upon within the timeframe specified for the permit, not including time required for the appeals process.

15. RECONSIDERATIONS

- A. Upon its own motion, or upon the written request by any party, the Board, for good cause, may vote to reconsider its decision. Any motion or request to reconsider must be made within ten (10) days of the decision of the Board.
- B. The Board may then decide to either: 1) deny the request for reconsideration; or 2) to reopen the proceedings in order to reconsider its earlier decision and, in doing so, may conduct further hearings and receive additional evidence and testimony. If the Board decides to reopen the earlier decision, the Board must notify all interested parties. The Board may limit the scope of any reconsideration.
- C. The Board's decision to either deny the request for reconsideration or to reopen the proceedings for reconsideration shall be made within fourteen (14) days of the motion or request to reconsider.
- D. If the Board decides to reconsider its decision and reopen the proceedings, then the Board shall issue a final decision within forty-five (45) days of the vote on the original decision.
- E. 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.

16. RECORDING OF VARIANCES

The applicant shall record the variance at the Registry of Deeds within ninety (90) days of the date of the final written approval of the variance as per Title 30-A, M.R.S.A. Section 4406

17. APPEAL TO SUPERIOR COURT

A. An appeal of the decision of the Board may be taken, within forty-five (45) days after the vote of the Board, by any party to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

1. In the event of an appeal to the Superior Court from the Board review of a Code Enforcement Officer decision, the decision of the Board shall be the operative decision for judicial review.
2. In the event of an appeal to the Superior Court from Board review of a Planning Board decision, the decision of the Planning Board shall be the operative decision for judicial review.

18. CONFLICTS WITH OTHER ORDINANCES

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other Ordinance, regulation or statute, the more restrictive provision shall apply.

19. SEVERABILITY

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.

20. ABROGATION

This Ordinance repeals and replaces any municipal ordinance, portion thereof, or legislative action previously enacted to comply with the requirements of 30-A MRSA § 2691 or 30 MRSA § 2411.