

CHAPTER 203

GENERAL BOARD OF APPEALS ORDINANCE

Town of Yarmouth, Maine

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GENERAL BOARD OF APPEALS

A. ESTABLISHMENT AND ORGANIZATION

Reestablishment: Pursuant to 30-A, M.R.S.A. § 2691, 3001, and 4353, and Article II.3 of the Yarmouth Town Charter, the present Zoning Board of Appeals for the town of Yarmouth as now constituted, is hereby reestablished and shall constitute the General Board of Appeals (the "Board of Appeals") under this ordinance, and each member thereof shall serve the remainder of his or her present term.

1. There shall be a General Board of Appeals consisting of five (5) members, all shall be residents of the town and appointed by the Town Council. The Board of Appeals shall elect annually a chair and a secretary from its membership. The members shall serve for terms of 3 years. Terms shall be staggered. Members shall continue in office until their successors are appointed.
2. No municipal official, town employee or a spouse of a municipal official may be a member or an alternate member of the board.
3. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by the majority vote of the members present and voting, excluding the member who is being challenged.
4. A member of the Board of Appeals may be dismissed for cause, after notice and hearing by the Town Council before the expiration of such member's term.
5. Vacancies shall be filled within sixty (60) days by appointment of the Town Council for the unexpired term.
6. The Board of Appeals shall meet monthly, except that the Board of Appeals is not required to meet if no appeal is pending. The Board of Appeals may also hold special meetings at the call of the Chairman.

B. PROCEDURE

1. The Board of Appeals shall adopt rules necessary to the conduct of its affairs provided that any rule may be waived by the Chairman upon good cause shown and in keeping with this Ordinance and the Ordinances to which this Board of Appeals is the appellate body. The Chairman, or in his absence the acting Chairman, may call meetings of the Board of Appeals and administer oaths as required. The Chairman or acting Chairman shall also call meetings of the Board of Appeals when requested to do so by a majority of the members or by the Town Council. A quorum of the Board of Appeals necessary to conduct an official Board of Appeals meeting shall consist of at least 3 members. The Chairman shall preside at all meetings of the Board of Appeals and be the official

spokesman for the Board of Appeals. All meetings of the Board of Appeals are open to the public.

2. The Secretary shall maintain a permanent record of all board meetings and all correspondence of the Board of Appeals. 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 of Appeals. All records to be maintained or prepared by the Secretary shall be on file in the municipal office and shall be open to public inspection during regular office hours.

C. APPEALS TO THE GENERAL BOARD OF APPEALS

1. The Board of Appeals may exercise jurisdiction only upon receipt of a written appeal from a person aggrieved, filed within 30 days of the decision complained of, stating the relief sought and the grounds thereof. The appeal shall be filed with the Town Clerk on forms to be approved by the Board of Appeals.
2. The Board of Appeals shall hear an appeal within 30 days from the date of receiving a written notice of request from an aggrieved party. Public notice thereof shall be posted in conspicuous places in the Town 7 days prior to the date of the meetings, as well as due written notice to the parties in interest. Any party may appear at the hearing in person or by authorized representative, agent or attorney. Before taking action on any appeal, the Board of Appeals shall hold a public hearing.

The Board of Appeals may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of the irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present its 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.

The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearings shall abide by the order of the Chair.

3. The Board of Appeals shall not accept or consider any oral or documentary evidence as testimony, which is submitted subsequent to the close of a hearing unless provisions for such submission are made prior to said closing.
4. If the Board of Appeals shall deny an appeal, a second appeal of a similar nature shall not be brought before the Board of Appeals within one year from the date of the denial by the Board of Appeals of the first appeal, unless in the opinion of a majority of the Board of Appeals, substantial new evidence shall be brought forward, or unless the Board of Appeals finds, in its sole and exclusive judgment,

that an error or mistake of law or misunderstanding of facts shall have been made.

D. APPEALS TO SUPERIOR COURT

Any person aggrieved by a decision of the Board of Appeals may appeal to Superior Court as provided in 30-A M.R.S.A. section 2691.

F. JURISDICTION, POWERS AND DUTIES

The Board of Appeals is authorized to hear variances and decide appeals from decisions, actions, or failure to act by the following officials and in the following matters:

1. By permitting authority in the administration or issuance of permits and approvals, or establishment of conditions thereon (if any), subject to paragraph 3 below:
 - a. Chapter 301 – Building Code
 - b. Chapter 304 – Sewerage Ordinance
 - c. Chapter 311 – Electrical Code
 - d. Chapter 315 – Flood Plain Management Ordinance
 - e. Chapter 317 – Sprinkler Ordinance, except decisions or waivers pursuant to Chapter 317 Article III (c)(2)
 - f. Chapter 320 – Stormwater Discharge Ordinance
 - g. Chapter 330 – Post-Construction Stormwater Management Ordinance
 - h. Chapter 401 – Fees and Permits Ordinance, except actions on fee waivers or reductions taken by the town council pursuant to Chapter 401 Article XXV(D)
 - i. Chapter 401 – Special Amusements Permits
 - j. Chapter 403 – Alarm Systems Ordinance
 - k. Chapter 407 – Emergency Services Fees
 - l. Chapter 604 – Right of Way Ordinance
 - m. Chapter 701 – Zoning Ordinance
2. All appeals and variance requests shall be in accordance with the applicable provisions of the subject code or ordinance, including any provisions thereof specifying the jurisdiction of the Board of Appeals.
3. The Board of Appeals' authority does not include appeals from any enforcement decisions made by the Code Enforcement Officer, Building Inspector, or other enforcement official. The term enforcement decisions refer to violation determinations and enforcement actions taken by the enforcement official. The Board of Appeals shall have no authority to act in any other matter except as expressly provided by ordinance or statute.

The Board of Appeals will have the power to hear decide all administrative appeals on a de novo basis, where it is alleged that there is an error in any order, requirement, decision or determination made by, or failure to act by,

the Permitting Authority in a review of a permit application under the ordinances listed in Subsection I(F)(1). When acting in a de novo capacity, the Board of Appeals shall hear and decide that matter afresh, undertaking its own independent analysis of the evidence and the law, and reaching its own decision.

For all matters before the Board of Appeals, the person filing the appeal or request shall have the burden of proof.

The Secretary of the Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for granting of a variance and an authorization for the Code Enforcement Officer or other applicable Permitting Authority to issue a development permit, which includes any conditions to be attached to the permit.

Site Inspections

The Board of Appeals may make site inspections as deemed necessary, together with the Permitting Authority and the petitioner, at a reasonable time as mutually agreed upon, in order to document the facts for the above finding.

Any and all site inspections and findings shall be recorded and made part of the permanent record.

G. DECISIONS

1. Except as otherwise provided in the ordinance under which an appeal is brought, the concurring vote of at least three members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Permitting Authority, or to decide in favor of the applicant in any matter on which it is required to pass under this Ordinance.
2. The transcript of testimony (if any), and exhibits, together with all papers and requests filed in the proceedings shall constitute the record.
 - a. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the basis therefor, upon all material issues of the fact, law, or discretion presented and the appropriate order, relief, or denial thereof.
 - b. All decisions of the Board of Appeals shall be made within 30 days from the date an appeals hearing is held.
 - c. Notice of any decision shall be mailed or hand delivered to the petitioner, his/her authorized representative or agent, the applicable municipal official, and the Code Enforcement Officer within 7 days of the Board of Appeals's decision.

The Board of Appeals may reconsider any decision reached under this section pursuant to the provisions in 30-A M.R.S.A. section 2691.

H. SUPERSEDING OF PRIOR ORDINANCE; RATIFICATION OR PRIOR BOARD ACTIONS

Any ordinance enacted or legislative act prior thereto and establishing or purporting to establish a board of appeals by that or another name, or governing or purporting to govern its membership, authority or procedure, except for ordinances expressly excluded under Subsection (F)(3) above, is hereby superseded, it being the intent of this ordinance to supersede and replace any such board with a General Board of Appeals lawfully established and authorized, among other things, to hear zoning appeals and requests for variances pursuant to 30-A M.R.S.A. § 4353. Any act prior hereto of that board commonly known as the board of appeals and abolished hereby is hereby ratified and confirmed. Except as otherwise specified in this Ordinance, any reference in any other ordinance to a board of appeals or an appeals board shall hereafter mean the General Board of Appeals established by this Ordinance, shall confer jurisdiction on the General Board of Appeals and shall incorporate the appeal procedures of this Ordinance.

I. BOARD OF ASSESSMENT REVIEW

This Ordinance does not apply to the Board of Assessment Review. Nothing in this Ordinance shall be construed to any way repeal, supersede, amend, or alter the establishment, authority, appointment, or authority of the Board of Assessment Review established pursuant to Article II.3 of the Yarmouth Town Charter.

J. SEVERABILITY

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision, which shall remain in full force and effect.