

Board of Appeals Ordinance

Town Lebanon, Maine

I. ESTABLISHMENT

Pursuant to Article VIII, Pt. 2, Sec. 1 of the Maine Constitution and 30-A M.R.S. § 3001, the Town of Lebanon hereby establishes the Lebanon Board of Appeals.

Section 1: Appointment

1.1 Members of the Board of Appeals shall be appointed by the municipal officers, who shall determine their compensation, and shall be sworn in by the municipal clerk or other person authorized to administer oaths.

1.2 The board shall consist of five (5) members and 2) alternate members, all of whom shall be legal residents of the Town, appointed for staggered terms of three (3) years.

1.3 The term of each member upon the Board's initial appointment shall be for 1, 2 or 3 years. The alternate members shall be appointed for a three (3) year term.

1.4 When there is a permanent vacancy of either a member or an alternate, the municipal officers shall within forty-five (45) days or as soon as possible thereafter appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member fails to attend four (4) consecutive regular meetings without a reasonable excuse, or when a member ceases to be a resident of the town. The municipal officers may remove members of the Board of Appeals by majority vote, for cause, after notice and hearing.

1.5 Neither a municipal officer nor his or her spouse may serve as a member or alternate member of the Board of Appeals.

Section 2: Organization, Rules and Procedures

2.1 The Board shall elect a chairperson and a secretary from among its full voting members and create and fill such other offices as it may determine necessary. The term of all offices shall be one (1) year with eligibility for re-election.

2.2 The Chairperson shall perform all duties required by state law and this ordinance, and preside at all meetings of the Board. The Chairman shall rule on issues of evidence, order, and procedure, and shall take other actions as necessary for the efficient and orderly conduct of hearings.

When a member is unable to act due to physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson shall designate an alternate member to sit in is or her place.

2.3 The Secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board.

2.4 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 of the members, except the member who is being challenged. When a voting member is unable to act due to a conflict of interest, the chairperson shall designate an alternate member to sit in his or her place.

2.5 The alternate members may attend all meetings of the Board and participate in its proceedings, but may vote only when he or she had been designated by the chairperson to sit for a member.

2.6 The chairperson shall call one regular meeting each month, provided there is business to conduct. The chairperson shall ensure posting notifications of all hearings and meetings in accordance with the Freedom of Access Act.

2.7 No meeting of the Board of shall be held without a quorum consisting of three (3) members or alternate members authorized to vote. No action shall be taken by the Board without at least three (3) concurring votes on the issue before the Board.

Section 3: Duties and Powers

3.1 The Board of Appeals may conduct administrative hearings to review and decide appeals, on an appellate basis, where exists an allegation by an aggrieved party of an error in any decision, order, requirement or determination made by the Planning Board, and to hear and decide administrative appeals, on a de novo basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by the Code Enforcement Officer.

3.2 The Board of Appeals may interpret the provisions of Town ordinances in relation to the appeals brought before the Board.

3.3 The Board of Appeals may authorize variances in specific cases, within the limitations set forth in this ordinance.

Section 4: Variances

4.1 Variances may be granted only for height, minimum lot size, structure size, setbacks, and open space requirements.

4.2 Variances shall not be granted for the establishment of any uses otherwise prohibited.

4.3 The board shall not grant a variance unless it finds that strict application of the ordinance to the appellant and the appellant's property would cause undue hardship. "Undue hardship" will be found only when all the following criteria are met:

- a) The land in question cannot yield a reasonable return unless a variance is granted;
- b) The need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood;
- c) The granting of a variance will not alter the essential character of the locality; and
- d) The hardship is not the result of an action taken by the applicant or a prior owner.

In order to demonstrate that the land cannot yield a reasonable return without a variance, the applicant must demonstrate that they will be deprived of all beneficial use of their land. Neither financial hardship alone or pleading that a greater profit may be realized from the applicant's property were a variance granted shall be sufficient evidence of undue hardship.

4.4 The board of Appeals is also authorized to hear and decide requests for disability variances as provided in 30-A M.R.S.A. § 4353 (4-A).

Section 5: Appeals Procedure

5.1 Administrative Appeals

a. When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

b. When the Board of Appeals reviews a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or

consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written and oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

5.2 Making an Appeal

a. Applications for administrative appeals shall be received within thirty (30) days of the written decision of the Code Enforcement Officer or Planning Board, and not otherwise, except that the Board of Appeals, upon a showing of good cause, may extend the thirty (30) day requirement.

b. An application for a variance may be filed directly with the Board of Appeals in accordance with the procedures below.

c. Appeals shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:

1. A sketch drawn to scale of 1" = 100' showing lot lines, location of existing building and other physical features pertinent to the variance request.
2. A concise written statement stating what variance is requested.

d. The Chairperson shall notify the Board of Selectmen, Planning Board, Code Enforcement Officer, petitioner and permit-holder, if applicable, of the appeal.

e. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board shall transmit to the Board of Appeals all of the documentation comprising the record of the original decision from which an aggrieved person is requesting an appeal hearing.

f. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal application. Notice of the date, time, and place of the hearing shall be publicly posted. Cost of the publication, with a minimum of \$50 paid upon submission of written notice of appeal, to be borne by the appellant.

Section 6: Hearings

6.1 In de novo hearings on administrative appeals of orders or decisions by the Code Enforcement Officer and variance applications, 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 their 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 hearing shall abide by the order of the Chairman.

6.2 At any hearing a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

6.3 The Code Enforcement Officer or representative of the Planning Board shall attend all hearings and may present to the Board of appeals all plans, photographs, or other material he or she deems appropriate for an understanding of the appeal. In appeals of Planning Board decisions, the information presented to the Board of Appeals shall be limited to the evidence presented to the Planning Board.

6.4 The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

Section 7: Decision of the Board of Appeals

7.1 A majority of the members of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.

7.2 The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

7.3 The person filing the appeal shall have the burden of proof.

7.4 The Board shall decide all appeals within thirty-five (35) days after hearing, and shall issue a written decision on all appeals.

7.5 Notice of any decision shall be mailed to the appellant, his or her representative or agent, the Code Enforcement Officer, Planning Board, and Selectmen within seven (7) days of the written decision date.

All decision shall become 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.

7.6 Upon notification of a decision by the Board of Appeals that the Code Enforcement Officer or Planning Board had erroneously denied a permit, the Code Enforcement Officer or the Planning Board shall promptly issue a permit in accordance with the Board's decision.

7.7 A copy of all variances effecting shoreland zoning granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within seven (7) days of the decision.

Section 8: Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State law within forty-five (45) days from the date of the decision of the Board of Appeals.

Section 9: Reconsideration

9.1 The Board of Appeals may consider a request for reconsideration within forty-five (45) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

9.2 The request for reconsideration shall be filed in writing within ten (10) days of the original decision by the Board of Appeals.

9.3 Any vote to reconsider and any action taken on the reconsideration shall be completed within forty-five (45) days of the original decision.

9.4 An appeal of a reconsidered decision to the Superior Court must be made within fifteen (15) days after the decision on reconsideration.

II. PROVISIONS TO RE-ESTABLISH THE LEBANON BOARD OF APPEALS

The Town of Lebanon hereby establishes a Board of Appeals. The current Board, which has been acting as a Board of Appeals is hereby re-established. The actions that the Board has taken prior to the adoption of this ordinance are hereby declared to be the acts of the legally constituted Board of Appeals of the Town of Lebanon.

III. SEVERABILITY CLAUSE

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

IV. EFFECTIVE DATE

The effective date of this Ordinance is 05/10/2016 Passed by Town Meeting Vote

649- Yes 300-No

A True Copy

Adopted this day June 14th, 2022
by Town Meeting Vote
Yes: 426 No: 320

A True Attest Copy


Town Clerk