

Article 6 Board of Appeals

[From Chapter 4 of the Bucksport Town Code]

SEC. 4-601 Board of Appeals Established

1. The Bucksport Board of Appeals is established pursuant to 30-A M.R.S.A. Section 2691.

SEC. 4-602 Appointment to the Board

1. The Board of Appeals shall consist of five (5) members, each of whom shall be appointed by the Town Council to serve for a five (5) year term commencing on April 1st. Terms shall be staggered so that one (1) appointment for a five (5) year term will be required every year. Appointments are not subject to term limits and members may be reappointed to serve subsequent terms. Members shall be sworn into office by the Town Clerk at the beginning of each of their respective terms.

SEC. 4-603 Vacancies of the Board

1. A vacancy shall occur if a Board member resigns, is unable to serve, or is absent for more than two (2) consecutive meetings, unless absent for good cause as determined by majority vote of the Board. The Chairman shall notify the Town Council of any vacancy. The Town Council shall fill any vacancy by appointing a new member for the balance of the term.
2. An incumbent Board member may continue to serve as a de facto member upon expiration of his term until such time the member is reappointed or another person is appointed and sworn in.

SEC. 4-604 Minimum Qualifications to Serve

1. Any person must meet the following minimum qualifications to serve as a Board of Appeals member:
 - a. The person must be at least eighteen (18) years old.
 - b. The person must be a United States citizen.
 - c. The person must be a legal resident of Bucksport. Legal residency is demonstrated when the person resides in a dwelling or apartment in Bucksport at least eight (8) months in any calendar year.
 - d. The person may not serve concurrently on the Town Council or Planning Board, or as the Bucksport Code Enforcement Officer.
 - e. The person may not be the spouse of a Bucksport Town Councilor, a Bucksport Planning Board member or the Bucksport Code Enforcement Officer.

SEC. 4-605 Conflict of Interest; Bias

1. **Conflict of interest.** A member having a conflict of interest in any matter before the Board shall make full disclosure of that interest before any action is taken on the matter.
2. A Board member shall have a conflict of interest if the member has a direct or indirect pecuniary interest in the outcome of an appeal. A direct or indirect pecuniary interest is deemed to arise if a member is an officer, director, partner, associate,

- employee or shareholder of a private corporation, business or other economic entity to which the matter relates and is also directly or indirectly the owner of at least ten percent (10%) of the stock of the private corporation or owns at least a ten percent (10%) interest in the business or other economic entity.
3. In addition to the provisions of subsection 2, a conflict of interest is deemed to exist if a member is in a situation whereby his own personal pecuniary interests may be served to the prejudice of the interests of the appellant or other parties to the appeal.
 4. **Bias.** A member with a bias in any matter before the Board shall make full disclosure of that bias before any action is taken on the matter.
 5. A bias is deemed to exist if for any reason a Board member is unable to make an impartial decision on an appeal application.
 6. As a matter of procedure, the Chairman of the Board should inquire of the Board whether any conflict-of-interest or bias exists before each matter is presented, but failure to do so may not invalidate any vote.
 7. When a question of an alleged conflict-of-interest or bias of any member is raised, the recusal of that member shall be decided by the majority vote of the other Board members present.
 8. A member recused by the Board or by his own volition may not participate further as a Board member in the proceedings on the matter at issue. A recused member may not attempt to influence the vote of other members, but may participate as an audience member.
 9. A current Board member may not represent any party before the Board, except any member may appear before the Board to represent themselves as an appellant. A current member appearing before the Board as an appellant is deemed to be recused during the Board's review of their application.
 10. A former Board member may represent any party before the Board in accordance with the time limitations set forth in 30-A M.R.S.A. §2605.

SEC. 4-606 Administration

1. The Board shall elect by majority vote a chairman and secretary to serve for a one (1) year period or until their successors are chosen. Vacancies in either office may be filled at any time by the Board.
2. The Board may draft procedural rules and submit them to the Town Council for approval. The rules must be consistent with the requirements of this article and state law.
3. Meetings shall be called by the chairman whenever there is business to conduct. Special meetings may be called by the chairman or by a majority of the members of the Board. At least one (1) public hearing shall be conducted for any administrative or variance appeal. The public hearing must be conducted within thirty-five (35) days of the date of receipt of the application at the town office.
4. The chairman of the Board of Appeals shall preside at all meetings and public hearings. When the chairman is absent, the secretary or another chosen by the members present and voting shall serve as proxy. The chairman shall:
 - a. Establish the agenda for each meeting;
 - b. Regulate the course of the meeting, set the time and place of adjournments, and fix the time for the filing of written submissions;

- c. Rule upon all issues of procedure or evidence; and
 - d. Take such other actions that may be necessary for the efficient and orderly conduct of the Board's business.
5. A quorum of the Board of Appeals is three (3) members. When no quorum is present at a meeting, no business of the Board may be conducted except to vote to adjourn generally or to a specific place and time. An affirmative vote from at least three (3) members shall be required before any motion before the board may be adopted.
 6. The Board may conduct any meeting or public hearing without the presence of the appellant or their representative. The Board may request the appellant to attend a meeting or to respond in writing to any questions that arise during their review of an application.
 7. The Board may require legal guidance or third-party consultations in the review of any appeal application. The determination of this requirement shall be made by majority vote of the Board. The responsibility for costs of legal or other third-party consultants shall be determined in accordance with the requirements of Section 4-610, subsection 2.
 8. The secretary of the Board shall maintain a permanent record of all proceedings, including minutes, written findings and decisions, and all correspondence of the Board. All records of the Board shall be kept at the town office. Copies of all minutes and decisions of the Board shall be provided to the Town Council.
 9. The business of the Board of Appeals is a public proceeding and the Board shall comply with the provisions of Title 1 M.R.S.A. §§ 401 to 410. Except as provided by law, all of its proceedings shall be open to the public and its records open to public inspection. The Board may only conduct an executive session in accordance with the requirements of Title 1 M.R.S.A. §405. A motion to enter an executive session must receive a three-fifths ($\frac{3}{5}$) public, recorded vote of the members present and voting and the motion must specify the subject matter and cite the applicable statute. No official action may be approved during an executive session.
 10. The board shall reach a decision within thirty-five (35) days after concluding their review of an appeal application. Within seven (7) days of the decision, the Board shall prepare a written account of their decision, which shall include a statement of findings and conclusions based upon all testimony and records reviewed. The written decision shall include the basis for the conclusion and an appropriate order, relief or denial of relief. The written decision shall be provided to the appellant, Town Council, Planning Board, Code Enforcement Officer and all other parties to the proceedings, including the Department of Environmental Protection when the Board's decision involves an appeal related to shoreland zoning regulations.

SEC. 4-607 Public Notice

1. Notice of all Board of Appeals meetings must be posted at the town office and a copy of the notice provided to the local news media, the Town Council, the Planning Board, the Code Enforcement Officer, the appellant and all other parties to the appeal. Notice must also be provided to the public drinking water supplier if the appeal involves a source water protection area, and the Maine Department of Environmental Protection if the appeal involves a shoreland zoning regulation. The notice must set forth the location, date, time and the purpose of the meeting.

2. Notice of any public hearing must be published in a local newspaper and posted at the town office and the public safety building lobby at least seven (7), but not more than twenty-one (21) days prior to such hearing. The notice must set forth the purpose of the hearing, the applicant's name, and the date, time and place of the hearing.
3. Notice of any public hearing pertaining to a variance appeal shall be sent by First Class U.S. Mail to all owners of property that abut the property subject to the variance appeal. Notice must be sent no later than ten (10) days before the public hearing.
4. Notice of any variance appeal involving a shoreland dimensional standard shall be sent by Certified First Class U.S. Mail to the Commissioner of the Maine Department of Environmental Protection no later than twenty (20) days before the public hearing.

SEC. 4-608 Authority of the Board

1. The Board is authorized to hear and rule on administrative appeals of any decision, determination, action, or non-action pertaining to the granting, denial, suspension, or revocation of any license, permit, waiver or other approval rendered by the Town Council, Planning Board or Code Enforcement Officer pursuant to the requirements of the following ordinances of the Bucksport Town Code:
 - a. Chapter 6 Business Licensing and Regulation, Section 6-202 (Special Amusement)
 - b. Appendix D Floodplain Management Ordinance
 - c. Appendix E Shoreland Zoning Ordinance
 - d. Appendix H Sign Ordinance
 - e. Appendix K Land Use and Site Plan Ordinance
2. The Board is authorized to hear and rule on administrative appeals pertaining to the determination of zoning district boundary lines.
3. The Board is authorized to hear and rule on variance appeals pertaining to any ordinance identified in subsection 1.
4. The Board is not authorized to hear or rule on appeals of any enforcement action or enforcement non-action of the Code Enforcement Officer or the Town Council.
5. The Board is not authorized to extend the deadline for the filing of any appeal application and fee, as identified in Section 4-610.

SEC. 4-609 Parties with Standing

1. The following parties shall have standing before the Board of Appeals:
 - a. A permittee or licensee, or a permit or license applicant, for an appeal pertaining to their permit or license.
 - b. Any party demonstrating that they are or will be suffering a direct and personal detrimental effect in the actual use or enjoyment of their property, or suffering any other hardship, due to a determination, decision, action, or non-action of the Town Council, Planning Board or Code Enforcement Officer.
 - c. Any group or organization demonstrating that a determination, decision, action, or non-action of the Town Council, Planning Board or Code Enforcement Officer involves an interest that is germane to the organization's purposes and that any one of its members has standing in their own right.
 - d. Any state or federal agency, office or department, for an appeal of a

determination, decision, action, or non-action of the Planning Board or Code Enforcement Officer, provided that the state or federal agency, office or department directly participated in the proceedings which are the subject of the appeal.

- e. The Bucksport Town Council, pertaining to any appeal before the Board.
- f. The Bucksport Planning Board, pertaining to any appeal before the Board.
- g. The Bucksport Code Enforcement Officer, pertaining to any appeal before the Board.
- h. Any party appealing for a variance who has complied with the requirements of Section 4-610(3).
- i. Any party seeking a determination of the location of a zoning district boundary line.

SEC. 4-610 Application & Fee Requirements

1. Any party seeking an appeal shall submit a completed application to the Town Clerk on forms provided by the town.
2. Any party seeking an appeal shall be responsible for all consultant and legal fees incurred by the Board which are directly related to the review and evaluation of the application. Upon written request from the appellant, the Town Council may grant a waiver of all consultant and legal fees or a portion thereof. Consideration of a waiver of fees shall be based on the showing of an undue financial hardship or other extenuating circumstances experienced by the appellant.
 - 2.1 Except when fees have been waived by the Town Council, before any consultant or legal services may be provided to the Board, the appellant must submit a deposit to the town in an amount based on estimated costs for the services. Subsequent deposits may be required if necessary, and the Board may table the application review until such deposits have been submitted. Payment of any final amount due must be made upon demand by the town. Any deposited funds remaining upon payment of all consultant and legal fees shall be refunded to the appellant.
3. Any party appealing for a variance must provide evidence of right, title or interest to the property subject to the variance, unless such evidence has been documented in the public record forwarded to the Board. A tenant or lessee seeking a variance must provide written authorization from the property owner to submit an appeal application.
4. The Board of Appeals may not hear and rule on any appeal unless the required application is submitted within the timeframe stated in the ordinance relevant to the appeal or, when no timeframe is stated, within sixty (60) days of the date of the determination, decision, action, or non-action which is the subject of the appeal. The submission of a variance appeal application is not subject to these time limits unless the Planning Board or Code Enforcement Officer has determined during an application review that a variance is required before a decision on an application can be made.

SEC. 4-611 Administrative Appeals

1. The Board shall conduct an appellate review of any administrative appeal application. In conducting the review, the Board shall examine the public record relevant to the

appeal and shall also accept any oral testimony or written documentation from the appellant and other parties to the appeal that is relevant to the Board's examination of the record.

2. The public record subject to examination by the Board shall consist of any recordings, transcripts, minutes, letters, applications, application review documents and any other documents in possession of the town which are relevant to the subject of the appeal and which are not considered confidential by statute. The Board may also consider evidence related to the appeal that is not part of the public record if it is determined that such evidence is required for a full and true disclosure of facts. The chairman shall rule on the exclusion of irrelevant, immaterial or unduly repetitious evidence.
3. The decision of the Board on an administrative appeal shall be based on their findings of the adequacy of the public record preserved by the town to support the decision, determination, action, or non-action being appealed. If the Board finds the record to be adequate, the appeal shall be denied. If the Board finds the record to be inadequate, the appeal shall be granted and the matter shall be remanded to the appropriate authority for actions consistent with the Board's decision.

SEC. 4-612 Variance Appeals

1. The Board shall conduct a de novo review of any variance appeal application. In conducting their review, the Board shall examine the public record relevant to the appeal and shall also accept any other relevant oral testimony or written documentation from the appellant and other parties to the appeal.
2. The Board may conduct a site visit or other fact-finding investigation that may be necessary to assist them in establishing the record of their review of an application.
3. The decision of the Board on a variance appeal shall be based on the record established by the Board. The Board shall limit granted variances as strictly as possible in order to ensure conformance with the purposes and provisions of the relevant ordinance to the greatest extent possible and, in doing so, may impose conditions on the variance as it deems necessary.
4. The appellant shall have the burden of proof.
5. The following types of variances may be granted by the Board of Appeals:
 - 5.1 **Undue Hardship Variance.** Except as provided in subsections 5.2, 5.3 and 5.4, the Board may grant a variance only when strict application of the ordinance to the appellant and the appellant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
 - a. The land in question can not 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 to the general conditions in 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 action taken by the appellant or a prior owner.

The Board may not grant an undue hardship variance allowing the establishment of any use that is prohibited in the zoning district governing the property subject to the appeal. In addition, the Board may not grant an undue hardship variance for a

proposed land use or structure unless the Board finds that all applicable land use standards will be met, except any standard from which relief is sought.

5.2 Disability Variance. The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. 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 the person with the disability. 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 the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, M.R.S.A. § 4553 and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

5.3. Single-family Dwelling Setback Variance. The Board may grant a set-back variance for a single-family dwelling. A variance from a set-back requirement may only be granted when strict application of the zoning ordinance to the appellant and the appellant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- a. The need for a 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 appellant or a prior owner;
- d. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- e. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A single-family dwelling set-back variance may only be granted for a single-family dwelling that is the primary year-round residence of the appellant. A variance under this subsection may not exceed twenty percent (20%) of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. A variance exceeding twenty percent (20%) of a set-back requirement may be granted if the appellant has obtained the written consent of affected abutting landowners, except a variance exceeding twenty percent (20%) of minimum setbacks from a wetland or water body required within any shoreland district may not be granted.

5.4. Dimensional Standards Variance. The Board may grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the appellant and the appellant's property would cause a practical difficulty and when the following conditions exist:

- a. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;

- b. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- c. The practical difficulty is not the result of action taken by the appellant or a prior owner;
- d. No other feasible alternative to a variance is available to the appellant;
- e. The granting of a variance will not unreasonably adversely affect the natural environment; and
- f. The property is not located in whole or in part within a shoreland district.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements, and "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the appellant to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the appellant.

- 6. **Variance recorded.** If the Board of Appeals grants a variance, a certificate shall be prepared in recordable form. The certificate shall identify the name of the current property owner, the property by reference to the last recorded deed in its chain of title, the variance that has been granted including conditions, if any, and the date of the granting. This certificate must be recorded in the local registry of deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

SEC. 4-613 Reconsideration

- 1. The Board may reconsider any decision within thirty (30) days of the date of the decision. A request to reconsider may be made by any Board member or any party with standing in the original proceedings. The request must be submitted in writing to the Town Clerk within fifteen (15) days of the date of the decision.
- 2. Notice of a meeting at which a request to reconsider will be introduced must be given to all parties with standing in the original proceedings.
- 3. Reconsideration may only occur if the Board finds, by majority vote, that there is reasonable cause to examine the Board's prior decision.
- 4. A vote to reconsider and the action taken on that reconsideration must occur and be completed within thirty (30) days of the vote on the original decision.
- 5. The Board may not consider another appeal application on an appeal that was denied, unless the appellant can show a substantial change in the circumstances which provided the basis for the first appeal.

SEC. 4-614 Appeal

- 1. Any party may take an appeal to Superior Court within forty-five (45) days of the date of the original decision of the Board, in accordance with the Maine Rules of Civil Procedure, Rule 80B.
- 2. Any party may take an appeal to Superior Court within fifteen (15) days of the date of a

reconsidered decision of the Board, in accordance with the Maine Rules of Civil Procedure, Rule 80B.

SEC. 4-615 Enforcement

1. The enforcement of this chapter shall be the duty of the Town Council acting through its town attorney pursuant to 30-A M.R.S.A. 4452 (as amended).