

## ARTICLE XV. - BOARD OF APPEALS

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### DIVISION 1. - GENERALLY

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**Secs. 60-1116—60-1129. - Reserved.**

### DIVISION 2. - ORGANIZATION

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#### **Sec. 60-1130. - Membership.**

There shall be a board of appeals consisting of seven members and two associate members appointed by the city council. Each member shall be at all times a resident of the city.

(Ord. of 9-21-2009, § 6.1A)

#### **Sec. 60-1131. - Term of office.**

The members and associate members of the board shall serve no more than three consecutive three-year terms.

(Ord. of 9-21-2009, § 6.1B)

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**Sec. 60-1132. - Associate members.**

An associate member shall have a vote only in the event that one or more regular members of the board are absent or are disqualified from serving on a particular matter because of a conflict of interest.

(Ord. of 9-21-2009, § 6.1C)

**Sec. 60-1133. - Jurisdiction.**

The board of appeals shall have jurisdiction over:

- (1) Interpretation of provisions of the zoning chapter called into question;
- (2) Administrative appeals from decisions or lack thereof of the building inspector or code enforcement officer in regard to an application for a permit under the zoning chapter;
- (3) The granting of variances from the requirements of the zoning chapter would cause undue hardship.

(Ord. of 9-21-2009, § 6.1D)

**Sec. 60-1134. - Board rules.**

The board shall adopt, and may from time to time amend, rules and regulations to govern the conduct of its business. The tape recording of the board's proceedings, 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 conclusion and the appropriate order, relief or denial thereof.

(Ord. of 9-21-2009, § 6.1E)

**Sec. 60-1135. - Quorum.**

Five members shall constitute a quorum at any meeting.

(Ord. of 9-21-2009, § 6.1F)

**Secs. 60-1136—60-1150. - Reserved.**

**DIVISION 3. - APPEALS PROCEDURE**

[Sec. 60-1151. - Petition.](#)

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**Sec. 60-1151. - Petition.**

Written petitions for appeal signed by any party in interest shall be filed in duplicate in the office of the

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municipal officer charged with enforcement of the zoning ordinance, together with the fee in the amount provided in the city fee schedule, within 30 days from the date of the decision or order. The municipal officer shall forward to the board of appeals, planning director, the chairman of the planning board and the city solicitor, one copy of such petition. The planning director, or in his absence, the chairman of the planning board, shall forward to the board of appeals as soon as possible any pertinent city planning information in his possession bearing on such appeal. The city solicitor shall forward to the board of appeals as soon as possible any pertinent legal information bearing on such appeal. Where no such information is received by the board of appeals by the time of the meeting at which such appeal is scheduled to be heard, it shall be presumed that none was available at that time. In any case in which such planning and legal information is received, it shall be summarized at the public hearing and an opportunity afforded for comment by those interested in the appeal.

(Ord. of 9-21-2009, § 6.2A)

**Sec. 60-1152. - Public hearing.**

(a) On each such petition, the board shall hold a public hearing, within 65 days of the filing of the appeal petition. Notice of the time, date, place, appellant name and subject of each such hearing shall be given by publication in a newspaper of general circulation in the city on two separate dates not more than 12 nor less than three days before the date of such hearing. Notification of the public hearing shall also be sent to the appellant, the planning director, the building inspector, the city manager and all owners of abutting property and property located directly across the street from the site of the property which is the subject of the appeal by mailing to them copies of such notice as published. Notices shall be mailed to such property owners at the addresses appearing for them in the then current property tax listing of the city. Failure of any property owner to receive such mail notice of any such public hearing shall not necessitate another hearing and shall not constitute grounds for objection by such property owner and shall not invalidate any action by the board of appeals on such appeal or application for variance.

(b) The chairman, or in his absence the acting chairman, shall preside at the public hearing. All hearings of the board of appeals shall be open to the public.

(c) The chairman shall open the hearing and determine whether a quorum of the board of appeals is present. For each appeal heard, the chairman shall summarize the nature of the appeal, identify all relevant information submitted, determine the board's jurisdiction and the appellant's standing, determine the parties to the action and proceed to accept oral and written testimony from the appellant and the public for and against the appeal. When all parties have been heard, the chairman shall close the hearing or, if additional time is needed, continue it to a later date.

(d) The chairman shall determine that the appellant has standing, that is, the right to appear as an appellant before the board. An appellant must hold title to the land, be part owner or have an option to buy or lease property and/or building, in order to have standing.

(e) The chairman shall determine the parties to the action. The appellant, municipal officers, planning board, abutting property owners, individuals who might be adversely affected by any decision and any member of the general public attending the meeting who has made specific statements concerning terms of the appeal, may be made party to the action.

(Ord. of 9-21-2009, § 6.2B)

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**Sec. 60-1153. - Decision.**

(a) The decision of the board shall be made as soon as possible, but not later than 30 days of the public hearing, unless extended by mutual agreement of the board and appellant. Failure of the board to act within 30 days shall be deemed to be the denial of the petition sought, subject to judicial appeal.

(b) The board of appeals may by an affirmative vote of a majority of those members present amend or revise a decision of the building inspector, code enforcement officer or of any other municipal officer acting under the zoning ordinance. The board of appeals may permit variances from literal application of the zoning ordinance in accordance with the principles, conditions and procedures set forth in this chapter, subject to the duty of the board to promote the public health, safety, convenience and welfare and to adhere to the central intents and purposes of this chapter. Approval may be subject to conditions, modifications and restrictions as the board of appeals may deem necessary.

(c) The board shall keep a record of each appeal entertained, noting the date when received from the building inspector or code enforcement officer, the date of hearing, the applicant or appellant and the date of the decision. The board shall record by resolution the final disposition of every appeal. All of the foregoing shall be public records filed with the office charged with enforcement of the zoning ordinance. Notice of the decision shall be mailed within seven days to the applicant or appellant. Each notice shall specify that judicial appeals shall be made pursuant to the terms of section 60-1208

(d) The right to proceed under any variance or petition granted under the terms of this chapter, voted by the board of appeals, or under change in a decision of the building inspector, code enforcement officer or other municipal official voted by the board of appeals, shall expire if such right be not exercised beginning within six months from the date of such vote. If such right is not exercised within six months of the date of the vote, the board may grant a six-month extension without having to make another finding of hardship provided that:

- (1) Conditions upon which the appeal was granted have not changed; and
- (2) The appellant can show just cause for the delay in beginning the project.

(Ord. of 9-21-2009, § 6.2C)

**Secs. 60-1154—60-1184. - Reserved.**

**DIVISION 4. - POWERS AND DUTIES**

- [Sec. 60-1185. - Interpretation.](#)
- [Sec. 60-1186. - Administrative appeals.](#)
- [Sec. 60-1187. - Variance.](#)
- [Secs. 60-1188—60-1207. - Reserved.](#)

**Sec. 60-1185. - Interpretation.**

(a) Except as otherwise provided in this chapter, the board of appeals shall interpret provisions of the zoning ordinance which are called into question. Only persons with standing may appeal the denial of a

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permit which was based on provisions of the zoning ordinance.

(b) Where there is no evidence to the contrary, zoning ordinance language should be given its ordinary meaning. Statements of purpose may provide a key to the intent of zoning provision. In interpreting the ordinance, the board may request the advice of the city solicitor, the planning director or qualified experts in zoning law.

(Ord. of 9-21-2009, § 6.3A)

**Sec. 60-1186. - Administrative appeals.**

(a) The board of appeals may hear appeals in the administration of the zoning chapter in order to determine if the building inspector or code enforcement officer erred in granting or denying a permit. An applicant who is given no decision on a permit request, or who is denied a permit may appeal.

(b) If the board of appeals finds that the building inspector or code enforcement officer acted in error, it should order the error to be corrected.

(Ord. of 9-21-2009, § 6.3B)

**Sec. 60-1187. - Variance.**

(a) The board of appeals may grant a variance from the dimensional regulations and supplementary district regulations contained in the zoning chapter where the strict application of the ordinance, or a provision thereof, to the petitioner or property would cause undue hardship based on:

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

Variances granted under this subsection (a) shall be the minimum necessary to relieve hardship. The burden of proof is on the applicant to prove undue hardship.

(b) The board of appeals may grant a variance for the expansion, extension or enlargement of nonconforming buildings or uses provided that:

- (1) The use being requested shall be approved by a majority of those members present (not less than a quorum being present).
- (2) The board of appeals shall make findings that the requirements of subsection (a) of this section have been met.

(c) In addition to the criteria in this section, in determining whether or not to grant a variance, the board shall also take into consideration the following:

- (1) Fire, electrical and police safety requirements;
- (2) The adequacy of the traffic circulation system in the immediate vicinity;

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- (3) The availability of an adequate water supply;
- (4) The availability of adequate sewerage facilities;
- (5) Would not violate the environmental standards or criteria contained in the Overlay Zoning Districts;
- (6) Would not adversely affect property adjoining the premises under appeal or nearby in the same neighborhood or in the same zoning district;
- (7) Would not endanger the public health, safety or convenience; and
- (8) Would not impair the integrity of the zoning chapter.

(d) Wherever necessary to meet the criteria or consideration listed in this division, the board, when granting a variance, may attach such conditions or restrictions as are in accordance with the objectives and purposes of this zoning chapter.

(e) The planning director, or his representative, shall be responsible for reviewing the records of hearings of the board of appeals. Such review shall be conducted on a monthly basis and shall be for the purpose of maintaining the zoning ordinance. The ordinance may be deemed to be in need of amendment when variances for identical purposes or reasons are applied for in a single zoning district or regarding a specific section of this chapter on three or more occasions within a given calendar year. In any case in which the zoning ordinances are deemed to be in need of amendment, the planning director or his representative shall prepare a report indicating whether the variances applied for suggest that the ordinance or the description of the zoning districts should be amended. Such reports shall be forwarded to the planning board for its review and recommendation.

(Ord. of 9-21-2009, § 6.3C)

**Secs. 60-1188—60-1207. - Reserved.**

## DIVISION 5. - JUDICIAL APPEAL

[Sec. 60-1208. - Superior court.](#)

[Secs. 60-1209—60-1234. - Reserved.](#)

### **Sec. 60-1208. - Superior court.**

Appeals from decisions of the city planning board or of the city zoning board of appeals or on account of the failure of any municipal official or board to comply with the order of the board of appeals shall be taken to the superior court within 30 days of such decision or action in accordance with Rule 80B of the Maine Rules of Civil Procedure and 30-A M.R.S.A. § 2691(3). Except as otherwise provided by statute, every person shall have the right to inspect and copy any record of the board's proceedings, provided that, the inspection be scheduled to occur during regular hours and at such a time as will not inconvenience the regular activities of the office having custody of the record and provided further that the cost of copying the recorded or, if necessary, the translation of mechanical or electronic data

compilations into some other form, shall be paid by the person requesting the copy.

(Ord. of 9-21-2009, § 6.4)

**Secs. 60-1209—60-1234. - Reserved.**

## **DIVISION 6. - SPECIAL APPEAL**

[Sec. 60-1235. - Floodplain district variances.](#)

[Sec. 60-1236. - Shoreland zone variance.](#)

[Sec. 60-1237. - Lake Auburn Watershed zone variance.](#)

[Secs. 60-1238—60-1255. - Reserved.](#)

### **Sec. 60-1235. - Floodplain district variances.**

The board of appeals may grant a variance from strict compliance with requirements of division 2 of article XII of this chapter after public notice and public hearing as provided in this article, provided the following conditions are met:

- (1) The applicant can show that a failure to grant a variance would result in undue hardship as defined in 30-A M.R.S.A. § 4353.
- (2) A determination made by the board with a certification from a registered professional engineer provided by the applicant, if need be, that the granting of the variance will not result in increased flood heights. The professional engineer shall include the following information within their certification: criteria on which the certification was based; any assumptions that were made; source of data for those assumptions; and references to the research material that was relied upon in making the certification. In addition, the board shall determine as a condition for the granting of the variance that it will not result in threats to public safety, extraordinary public expense, create a nuisances, causes fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (3) A determination by the board that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) The applicant shall be notified in writing that the issuance of a variance to building a structure below the base flood level will result in increased premium rates for flood insurance and such construction below the base flood level increases risks to life and property.

(Ord. of 9-21-2009, § 6.5A)

### **Sec. 60-1236. - Shoreland zone variance.**

When by reasons of extraordinary physical conditions peculiar to the land or building under appeal but not to other land or buildings adjoining or nearby, an owner of land would be subject to unusual difficulty or special hardships (not mere financial hardship or hardships caused by reason of the literal application and rigorous enforcement of the terms of this chapter), the board of zoning appeals may grant a variance from strict compliance with the requirements of division 2 of article XII of this chapter

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after notice and public hearing as provided in this article. No such variance shall be granted unless the board is satisfied that the variance applied for will not adversely affect the quality of the adjacent water body. In granting any such variance application, the board may also impose reasonable conditions upon the use of the land in question which shall be reduced to writing and made a part of the permanent records of the board.

(Ord. of 9-21-2009, § 6.5B)

**Sec. 60-1237. - Lake Auburn Watershed zone variance.**

When by reason of extraordinary physical conditions peculiar to the land or buildings under appeal but not to other land or buildings adjoining or nearby, an owner of land would be subject to unusual difficulty or special hardships (not mere financial hardship or hardships caused by rigid sewage disposal regulations) by reason of the literal application and rigorous enforcement of the terms of this chapter, the board of zoning appeals may grant a variance from strict compliance with the requirements of division 4 of article XII of this chapter after notice and public hearing as provided in this article. No such variance shall be granted unless the board is satisfied that the variance applied for will not adversely affect the quality of the Lake Auburn water supply. When an application for a variance is filed, it shall be forwarded to the city water district with a request for an informational report and a recommendation to the board regarding the disposition of the requested variance application. In any case in which a variance request is granted, despite the recommendation of the water district that it be denied, the board of appeals shall make part of its permanent records a written statement of its reasons for taking such action. In granting any such variance application, the board may also impose reasonable conditions upon the use of the land in question which shall be reduced to writing and made a part of the permanent records of the board.

(Ord. of 9-21-2009, § 6.5C)

**Secs. 60-1238—60-1255. - Reserved.**