

**BOARD OF APPEALS ORDINANCE  
TOWN OF PHIPPSBURG  
March 19, 1994 (as amended through May 10, 2006)**

This Ordinance repeals and replaces those sections of the Land Use Ordinance of June 1993 pertaining to the Board of Appeals, namely Section 4.7, 4.8, and 4.9 and the Shoreland Zoning Ordinance of June 1993 sections 16.G.1.a to end of section.

**I. GENERAL PROVISIONS:**

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and Roberts' Rule of Order.
- B. 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 as well as with the applicable state statutes. As of the date of enactment of this ordinance, the Board is responsible for the following town ordinances: Harbor Ordinance, Shellfish Ordinance, Land Use Ordinance and Subdivision Ordinance and the Shoreland Zoning Ordinance.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the Comprehensive Plan, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.

**II. APPOINTMENTS:**

- A. The Board shall consist of five members appointed by the Board of Selectpersons of the Town of Phippsburg for terms of three years. The Board of Selectpersons shall appoint the necessary number of members within thirty (30) days of the Annual Town Meeting each year. The initial appointments, following the 1994 Annual Town Meeting, shall be as follows: two members to serve terms to expire as of the date of the Annual Town Meeting in 1995, two members to serve terms to expire as of the date of the Annual Town Meeting in 1996, and one member to serve a term to expire as of the date of the Annual Town Meeting in 1997.
- B. Thereafter, all appointments to the Board shall be for terms of three years.
- C. The Board of Selectpersons shall appoint two (2) alternate members to the Board to act when a regular member must be absent. The chairperson of the Board shall designate which shall serve in place of the absent member.
- D. Neither a selectperson nor his or her spouse may be a regular member or an alternate member of the Board.

- E. Any member of the Board may be removed from the Board, for cause, by the Board of Selectpersons before expiration of his/her term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him/her. The term, “for cause” shall include failure to attend three consecutive Board meetings or hearings without a sufficient justification, or voting when the member has a “conflict of interest.”
- F. When there is a vacancy, the Secretary shall immediately notify the Board of Selectpersons. The Board of Selectpersons shall within 60 days appoint a person to serve for the unexpired term.

III. CONFLICT OF INTEREST:

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.

The term “conflict of interest” shall be constructed to mean direct or indirect monetary interest, which shall include monetary benefit to any member of the person’s immediate family (grandparents, parents, spouse, children, grandchildren, etc.) or to the person’s employer or the employer of any member of the person’s immediate family.

IV. POWERS AND LIMITATIONS:

- A. The Board shall have the following powers to be exercised only upon receipt of written appeal by an aggrieved party:
  - 1. The Board may interpret the provisions of any applicable town ordinance which are called into question unless an appeal procedure is already provided for in the specific ordinance or by state statute.
  - 2. The Board may grant a variance only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words “undue hardship” as used in this subsection mean:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted;
    - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
    - c. That the granting of a variance will not alter the essential character of the locality; and

- d. The hardship is not a result of action taken by the applicant or prior owner.
3. As per 30A M.R.S.A. § 4353 Para 4-A the Board may grant a disability variance which will allow the owner of a dwelling to make physical changes for the purpose of making that dwelling unit accessible to a person with disabilities who resides in or regularly uses the dwelling. The variance will be limited solely to the installation of equipment or the construction of structures necessary for access and egress. The Board also may impose conditions on the variance, including limiting the variance to the duration of the disability or the time that the person with the disability lives in the dwelling.
4. Unless otherwise specified in a specific ordinance or by state statute, the Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit variance or other required approval, or any application thereof, including, the grant, conditional grant, denial, suspension, or revocation of any such license, permit, variance or other approval (hereinafter a "Decision"):
  - a. rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;
  - b. rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to any statute, the Town Land Use ordinance, or Article II of the September 22, 1993 Town Meeting (Plumbing Code);
  - c. rendered by the Planning Board of the Municipal Officers pursuant to the Subdivision Regulations or the Maine subdivision statute.
  - d. When hearing an Appeal of a decision made by the Planning Board or the Code Enforcement Officer that did not require a butter notification or a public hearing, the Board shall act in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence and the law, make findings of fact, and reach its own decision.

When hearing an Appeal of a decision made by the Planning Board or Code Enforcement Officer that required either a butter notification or a public hearing, the Board of Appeals shall act in an appellate capacity and shall make its decision based on the record presented to it from the Planning Board or Code Enforcement Officer.

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

Definition of a De Novo Review: A review that looks at the factual and legal issues afresh, undertakes its own credibility determinations, evaluates the evidence presented, makes findings of fact, and draws its own factual and legal conclusions based on the evidence presented.

- B. The Powers and Limitations of the Board, as specified in Section V (A), can be changed only by an amendment to this ordinance as approved by the voters.

V. VOTING:

- A. A quorum shall consist of three members of the Board.
- 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 a majority of the entire regular membership of the Board unless otherwise specified herein.
- D. A tie vote or favorable vote by a lesser number than the required majority of three (3) members 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. The chairperson shall appoint an alternate member to act for each regular member who is: disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member from the initiation of a case until the case is decided.

VI. APPEAL PROCEDURE:

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V must file such application for appeal, in writing on forms provided, within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal with the Chairperson of the Board, setting forth the ground for his/her appeal. The person filing the appeal shall have the burden of proof.
- B. The fee to accompany applications for appeal shall be fifty (\$50.00) dollars. Checks are to be made payable to the Board of Appeals of the Town of Phippsburg.

- C. As per 38 MRSA §438-A, sub-§6-A - If a request is made for a variance from the requirements of the Shoreland Zoning Ordinance a copy of the request must be forwarded to the Commissioner of the Department of Environmental Protection 20 days prior to action by the municipality. The material submitted must include the application and all supporting information provided by the applicant. The Commissioner may comment when the Commissioner determines that the municipal issuance of the variance would not be in compliance with the requirements of state law for zoning variance or that the variance would undermine the purposes stated in section 435. These comments, if submitted, must be made part of the record and must be considered by the Board of Appeals prior to taking action on the variance request.

VII. HEARINGS:

- A. The Board shall schedule a public hearing on all appeals applications within sixty (60) days of the filing of a completed appeal application with all supporting documentation.
- B. The Board shall cause a notice of the public hearings to be given to the Board of Selectmen, Planning Board, and the Appellant at least 10 (ten) days prior to the hearings. The Appellant shall notify abutters of the requested variance at least 10 (ten) days prior to the hearing. Proof of such notice shall be presented with the application at the public hearing. Acceptable proof shall consist of an abutter's signature on the application form, an abutter's statement and signature on a separate document, or a certified mail return receipt showing either a signature or post office failure to deliver to the abutter's last known address.

VIII. DECISIONS:

- A. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing.
- B. The final decision on any matter before the Board shall be made by written order signed by the chairperson. 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 thereof, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- C. 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.

- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of this ordinance whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. The board may reverse the decision, or failure to act, of a town officer, board or commission only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.
- F. Notice of any decision shall be sent by certified or registered mail or hand delivered to the applicant, his representative or agent, the concerned town officers, boards, commissions, Board of Selectpersons within seven (7) days of the decision.
- G. Decisions of the Board shall be immediately filed in the town office and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- H. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision, however, the Board may extend this time an additional ninety (90) days.

IX. RECONSIDERATION:

- A. The Board may reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony. Notwithstanding section X.A., appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.
- B. 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.

X. APPEAL TO SUPERIOR COURT:

- A. The decisions of the Board of Appeals may be taken, within forty-five (45) days after the decision is rendered, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure.
- B. Where the Board has jurisdiction under Article IV of this ordinance an appeal to Superior Court, in general, is to be presented by the matter having been properly brought to the Board.

XI. 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.

<b>Amendment Summary</b>		
<b>Date</b>	<b>Section</b>	<b>Amendment</b>
5/14/02	Title Paragraph	Added Shoreland Zoning references
5/14/02	Section VI.A.	Person filing appeal has burden of proof
5/14/02	Section VII.B.	Change in Notice of Public Hearing
5/14/02	Section X.A.	Time limit for appeal to Superior Court reduced
5/11/05	Section IV.	Allows "De Novo" Hearings in certain circumstances
5/10/06	Section IV.A.1.	Removes specific applicable ordinances that may be appealed
5/10/06	Section IV.A.3.	Added disability Variance
5/10/06	Section IV.A.4.	Reference to ordinances and statute
5/10/06	Section VI.B.	Increase in application fee to \$50.00
5/10/06	Section VI.C.	DEP requirement to forward Shoreland Zoning variance requests
5/10/06	Section VII.A.	Increase in scheduling Public Hearings to 60 days
5/10/06	Section VIII.D.	Word change from <u>these rules</u> to <u>this ordinance</u>
5/10/06	Section IX.A.	Reconsideration time frame change (filing within 10 days, hearing within 45 days, appeal within 15 days)

Certified to be a true copy: Betty J. Herron, Town Clerk \_\_\_\_\_