

**Town of Appleton
Board of Appeals Ordinance**

The Town of Appleton hereby ordains and enacts “The Town of Appleton Board of Appeals Ordinance” to read as follows:

Section 1 Establishment

There is hereby established a board of appeals pursuant to 30-A M.R.S.A. § § 2691, 3001, 4103 and 4353.

Section 2 Appointment

2.1. Members of the board of appeals shall be appointed by the municipal officers, who shall determine their compensation, and shall be sworn by the municipal clerk or other person authorized to administer oaths.

2.2. The board shall consist of five (5) regular members and two (2) associate members.

2.3. Regular members shall serve three (3) year staggered terms. Associate board members shall be appointed for three year terms.

2.4. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, removal for cause or when a member fails to attend four (4) consecutive regular meetings without a reasonable excuse. The municipal officers may remove members of the board of appeals by majority vote, after providing notice and an opportunity for a hearing.

2.5. Neither a municipal officer nor his or her spouse may serve as a member or associate member of the board of appeals.

Section 3 Organization, Rules, and Procedures

3.1. 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. The term of all offices shall be one (1) year with eligibility for reelection.

3.2. When a member is unable to act because of conflict of interest, physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson shall designate an associate member to sit in his or her place.

3.3. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

3.4. An associate member may attend all meetings of the board. He/she may ask questions or offer comments only when members of the public are allowed to do so, and may make and second motions and vote only when he or she has been designated by the chairperson to sit for a member.

3.5. The chairperson shall call one regular meeting each month, provided there is business to conduct. Special meetings can be called at any time by the chairperson or by a majority of the members. Notice of regular, special and emergency meetings shall be given in accordance with the Maine Freedom of Access Act.

3.6. No meeting of the board shall be held without a quorum consisting of three (3) members or associate members authorized to vote. No action shall be taken by the board without a majority vote of those present and voting.

Section 4 Duties and Powers

4.1. The board of appeals may adopt bylaws governing board functions.

4.2. The board of appeals may adopt rules and procedures for transaction of business, and the secretary shall keep a record of its resolutions, transactions, correspondence, findings, and determinations.

4.3. The board of appeals shall file all bylaws, rules and procedures and subsequent revisions, and decisions with the municipal clerk.

4.4. The board of appeals shall perform such duties and exercise such powers as are provided by ordinance and the laws of the State of Maine. To the extent that any powers and duties of the board of appeals enumerated in any other ordinance of the Town of Appleton shall conflict with this Ordinance, the stricter of the two shall prevail.

4.5 In addition to the powers granted to the board of appeals by other Town ordinances and the laws of the State of Maine, the board of appeals shall also have the power to grant variances in the following circumstances:

A. **Disability variance; vehicle storage.** A disability variance may be granted as follows:

- (1) The board of appeals 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 paragraph 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.
- (2) The board of appeals may impose conditions on the variance granted pursuant to this section 4.5(A), 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 paragraph, 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.

- (3) The board of appeals may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.
- (4) For purposes of this section 4.5(A), "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42, as amended, which at the time of adoption of this ordinance means a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability.
- (5) For purposes of this section 4.5(A), "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A, as amended.
- (6) In order to be entitled to the variances referenced in this section 4.5(A), the person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
- (7) The board of appeals may impose conditions on the variance granted pursuant to this section 4.5(A).
- (8) All medical records submitted to the board of appeals and any other documents submitted for the purpose of describing or verifying a person's disability are confidential and are not public records.

B. Set-back variance for single-family dwellings. The board of appeals may grant a variance from a set-back requirement only when strict application of the governing ordinance to the petitioner and the petitioner's property would cause undue hardship.

- (1) The term "undue hardship" as used in this section 4.5(B) 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 applicant or a prior owner;

- (d) The granting of the variance will not substantially reduce or impair the use of abutting property; and
 - (e) The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
- (2) Any variance granted under this section 4.5(B) is strictly limited as follows:
- (a) It may only be granted for a single-family dwelling that is the primary year-round residence of the petitioner.
 - (b) It may not exceed 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.
 - (c) Except as otherwise provided, it may exceed 20% of a set-back requirement, up to a limit of 40%, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, as amended, if the petitioner has obtained the written consent of all affected abutting landowners.

4.6. The board of appeals may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose by the legislative body of the municipality

4.7 Any variance granted is not valid until recorded in the registry of deeds as provided in 30-A MRSA § 4353(5) as amended.

Section 5 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.

Adopted February 4, 2020.

A True Attest Copy: *Pamela J. Smith*
Town Clerk, Pamela J. Smith

NOTE:

ARTICLE 3. Article 2 was approved. The Town voted to retroactively ratify the Board of Appeals' authority to have made all decisions prior to February 4, 2020.