



***TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS***

Board Composition.

The Board of Zoning Appeals consists of five (5) full members and four (4) associate members who are appointed by the Town Council.

Terms of Office.

The term of office is three (3) years.

Meeting Schedule.

3rd Thursday as needed at 7:30 p.m.

Powers and Duties.

The Board has jurisdiction to hear the following matters:

- (a) Administrative Appeals. Appeals by persons aggrieved by decisions of the Code Enforcement Officer or of any other appropriate Board, such as the Planning Board.
- (b) Variance Appeals. Appeals requesting a reasonable variance from the minimum lot size or dimension standards of the Zoning Ordinance, including the reasonable alteration, extension or enlargement of a non-conforming use.
- (c) Special Exceptions. Requests for special exceptions to allow uses designated as "Special Exceptions" under the Zoning Ordinance.

Staff Contact Person.

Code Enforcement Officer – Jeff Hutchinson (725-6651)

ZONING BOARD OF APPEALS

(Current as of January 1, 2008)

(Town Charter Section 803, State Law Title 30-A, § 2691 and Zoning Ordinance 216.11)

TOWN CHARTER – SECTION 803

Section 803. Zoning board of appeals.

(a) There shall be a Zoning Board of Appeals composed of 5 members and 4 associate members who shall be appointed by the council for terms of 3 years.

(b) The members and associate members of the Board must be residents of the Town. If a member or an associate member ceases to be a resident, the office shall immediately become vacant.

(c) Neither a member of the council nor spouse may be a member or associate member of the Board.

(d) Any vacancy on the Board shall be filled by appointment by the council for the unexpired term.

(e) Annually, on or about May 1, the Board shall choose a Chair, Vice-Chair, and Secretary from its membership.

(f) When a member is unable to act because of conflict of interest, physical or mental incapacity, absence, or for any reason, the Chair shall designate an associate member to act. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting shall be decided by a majority of the members, except the member who is being challenged.

(g) A quorum consists of 5 members, which may include associate members.

(h) The Board shall hear appeals from the zoning ordinance.

(i) The Chair shall call and preside at meetings of the Board as necessary. The Chair shall also call meetings of the Board when requested to do so by a majority of the members of the Board or by the council. The Chair is the official spokesperson of the Board.

(j) 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. All records prepared or maintained by the Secretary are public records. They shall be filed in the Town Clerk's office. They may be inspected at reasonable times.

(k) The Board may provide by rule, which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chair upon good cause shown.

(l) The Board may receive any oral or documentary evidence. It shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present a 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.

(m) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, 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 therefor, upon all material issues of fact, law or discretion presented and the appropriate order, relief, or denial thereof. Within 7 days after a decision is made, notice thereof shall be mailed or hand-delivered to the petitioner, or petitioner's representative, the Planning Board and the Town Council.

(n) Within 45 days after the decision is rendered, an appeal may be taken by any party to Superior Court in accordance with the Maine Rules of Civil Procedure. Rule 80B.

M.R.S.A. TITLE 30-A, § 2691

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30-A §2691. Board of appeals

This section governs all boards of appeals established after September 23, 1971.

1. Establishment. A municipality may establish a board of appeals under its home rule authority. Unless provided otherwise by charter or ordinance, the municipal officers shall appoint the members of the board and determine their compensation.

2. Organization. A board of appeals shall be organized as follows.

A. The board shall consist of 5 or 7 members, serving staggered terms of at least 3 and not more than 5 years, except that municipalities with a population of less than 1,000 residents may form a board consisting of at least 3 members. The board shall elect annually a chairman and secretary from its membership.

B. Neither a municipal officer nor a spouse of a municipal officer may be a member or associate member of the board.

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

D. The municipal officers may dismiss a member of the board for cause before the member's term expires.

E. Municipalities may provide under their home rule authority for a board of appeals with associate members not to exceed 3. If there are 2 or 3 associate members, the chairman shall designate which will serve in the place of an absent member.

3. Procedure. The following provisions govern the procedure of the board.

A. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers. A quorum of the board necessary to conduct an official board meeting must consist of at least a majority of the board's members. The chairman shall preside at all meetings of the board and be the official spokesman of the board.

B. 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. All records to be maintained or prepared by the secretary are public records. They shall be filed in the municipal clerk's office and may be inspected at reasonable times.

C. The board may provide, by regulation which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that the chair may waive any regulation upon good cause shown.

D. 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 has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.

E. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the board, and the exhibits, together with all papers and requests filed in the proceeding, constitute the public record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision must be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within 7 days of the board's decision.

F. The board may reconsider any decision reached under this section 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 as provided in this subsection.

Notwithstanding paragraph G, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

G. Any party may take an appeal, within 45 days of the date of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown. The hearing before the Superior Court must be without a jury.

4. Jurisdiction. Any municipality establishing a board of appeals may give the board the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, regulation or failure to act of any officer, board, agency or other body when an appeal is necessary, proper or required. No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board. Any board of appeals shall hear any appeal submitted to the board in accordance with Title 28-A, section 1054.