

Explanation for Planning Board and Select Board

Reorganization and Amendments to

To

Chapter 700 Rockport Land Use Ordinance

1. The sections and subsections make no sense as the same number is used for several sections or subsections *i.e.* 701 is used three times.
2. This chapter has inconsistent use of “Zoning Board of Appeals”, “Board of Appeals” and “Board.” This is harmonized in the attached redraft by using “ZBA.”
3. Redundancy – the former subsection 705 about reconsidering a decision substantially overlaps with section 707 dealing with Reapplication of Appeal. To avoid redundancy, the former provision is deleted.
4. Qualitative criteria for ZBA decisions has been deleted from 706 as redundant with the factors considered by the planning board.
5. The Ordinance lacks standards for review of the actions of the Code Enforcement Officer. Language is suggested in section 705 (3) which parallels the standard for a review of actions by the Planning Board.
6. Section 702 (1) refers to the “municipal officer” and could benefit from some specificity, such as Town Manager.
7. In the absence of the Chair of the Board, the Vice Chair should preside that has been added to section 702 (1).
8. Current subsection 703 under section 702 (section 702(3) in the revised draft) is vague in that it allows “every party” to participate in the appeal. The intent, obviously, is to focus on the participants involved in the dispute but others might read it to include any busybody who is seeking a forum. Suggested language is added to section 702(3) making it consistent with limiting the participation to the petitioner, which is consistent with the following subsection..

Town of Rockport

Land Use Ordinance

Chapter 700 – Zoning Board of Appeals

701. Organization

1. The Zoning Board of Appeals (“ZBA”) shall have seven (7) members, serving staggered terms of at least three (3) years. The ZBA shall elect annually a Chair and Vice Chair from its membership.
2. A quorum of the ZBA necessary to conduct an official board meeting shall consist of a majority of the ZBA’s members.
3. All additional matters involving the organization and governance of the ZBA shall be controlled by the ZBA Ordinance and the ZBA By-Laws.

702. Procedure

The following provisions govern the procedure of the ZBA:

1. The Chair, or in her or his absence, the Vice Chair shall (a) call meetings of the ZBA as required; (b) call meetings when requested to do so by a majority of the members of the ZBA or by the Town Manager; and (c) preside at all meetings of the ZBA and be the official spokesperson of the ZBA.
2. The recording secretary shall create a permanent record, in the form of minutes. A permanent and public record of ZBA Business and all correspondence of the ZBA shall be filed in the Planning and Community Development Office and may be inspected at reasonable time.
3. The ZBA 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 petitioner has the right to present that 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.

4. The digital video recording, together with all papers filed in the proceeding, constitute the permanent record. All decisions become a part of the record and must include a statement of finding 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, petitioner's representative, Planning Board and municipal officers within seven (7) days of the ZBA's decision.

703 Powers and Duties

The ZBA shall have the following powers and duties:

1. **Interpretation**

To interpret provisions of the Ordinance which are called into question.

2. **Administrative Appeals**

To hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made by the Code Enforcement Officer or the Planning Board.

3. **[Intentionally Blank]**

4. **Variance**

To grant a variance from the requirements of this Ordinance. To hear and decide, upon appeal, in specific cases, such variances from the requirements of this Ordinance as will not be contrary to public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in undue hardship. In granting by majority vote any variance, the ZBA may prescribe conditions and safeguard as are appropriate under this Ordinance and 30-A M.R.S.A. § 4353 as referenced in the following paragraph shall be strictly followed:

The ZBA may grant a variance only when strict application of the Ordinance to the petitioner and the Petitioner's property would cause undue hardship. These 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 of the neighborhood.
- C. That granting a variance will not alter the essential character of the locality.
- D. That the hardship is not the result of action taken by the applicant or a prior owner.

Before granting approval of a side or rear yard setback variance that is less than fifteen (15) feet from the property line or height variance that is more than thirty-four (34) feet, the ZBA shall obtain a written statement from the Fire Chief concerning the effect of the proposed variance on fire safety.

5. Disability Variance

The ZBA 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 ZBA shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access or egress from the dwelling by the person with the disability. The ZBA 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 5 M.R.S.A., § 4553, and is defined as any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or, in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services, 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.

6. **Setback Variance for Single-Family Dwelling**

The ZBA may permit a setback variance only when strict application of the Zoning Ordinance to the petitioner and the petitioner's property would cause undue hardship.

The term "undue hardship" as used in this subsection means:

- A. For a single-family dwelling, the need for a variance is due to the unique circumstance 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. That the granting of variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance here is strictly limited to permitting a variance from a setback requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed twenty percent (20%) of a setback requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The petitioner may receive a variance under this subsection to exceed twenty percent (20%) of a setback requirement except for minimum setbacks from a wetland or water body required within shoreland zones, if the petitioner has obtained the written consent of an affected abutting landowner.

7. **Variance Recorded**

If the ZBA grants a variance, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the Knox County Registry of Deeds.

8. **Miscellaneous Appeals**

To hear and decide only the following miscellaneous appeals from the provisions of this Chapter In granting such appeals by majority vote, the ZBA may prescribe conditions and safeguards as it deems necessary.

- A. To permit variations of nonconformance as authorized under Section 505 of this Ordinance.
- B. To permit adjustments from the terms of this Ordinance with respect to curb cuts and off-street parking standards, provided such variances, will not result in traffic, pedestrian or safety hazards.

704 Application Procedure

A complete application containing all the information requested in the '*Board of Appeals Application*' and appropriate fee shall be submitted to the Planning Office at least fifteen (15) days prior to a regularly scheduled meeting. Applicants should carefully follow the application procedure specific to their application/appeal and precisely tailor their application and supporting documentation to the specific requirements for *administrative appeals, conditional uses or variances*.

705 Appeal Procedure

1. In all cases, a person aggrieved by a decision of the Code Enforcement Officer or the Planning Board, except for a Planning Board decision pertaining to subdivisions, shall commence his or her appeal to the ZBA within thirty (30) days after the decision of the Code Enforcement Officer or the Planning Board.
2. In appeals to the ZBA from Planning Board decisions, the ZBA shall review the record of the Planning Board decision to determine whether the Planning Board has made an error of law, abused its discretion or made findings not supported by substantial evidence in the record, (See Section 1307 for Site: Plan Review appeals,)
3. In appeals to the ZBA from decisions of the Code Enforcement Officer, the ZBA shall review the record of the Code Enforcement Officer's decision to determine whether the Code Enforcement Officer's decision was made in conformance with Chapter 600 of this Land Use Ordinance, was an abuse that Officer's discretion or was not supported by substantial evidence in the record.
4. Before taking action on any appeal, the ZBA shall hold a public hearing advertised in advance in a local newspaper at the expense of the appellant.

5. Appeals from decisions of the ZBA may be taken by an aggrieved party to the Superior Court, pursuant to 30-A M.R.D.A. § 2691, within forty-five days of the date of the ZBA decision.

706 Conditions

In granting appeals under this Chapter, the ZBA may impose such conditions as it deems necessary in furtherance of the intent and purposes of this Land Use Ordinance.

707 Reapplication for Appeal

If the ZBA shall deny an appeal, a second appeal affecting the same premises and requiring a similar decision shall not be heard by the ZBA within six (6) months from the date of the denial by the ZBA of the first appeal, unless in the opinion of four (4) members of the ZBA substantial new evidence shall be brought forward, or unless four (4) members of the ZBA find, in their sole and exclusive judgment, that an error or mistake of law or misunderstanding of fact has been made.