

BOARD OF APPEALS ORDINANCE

For the Town of Machiasport
Enacted at Special Town Meeting:
November 3, 1993

I. GENERAL PROVISIONS:

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and Robert's 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.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in a "Comprehensive Plan", if any, 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 (5) members appointed by the municipal officers of the Town of Machiasport for terms of Three (3) years. The initial appointments shall be as follows: Two (2) members to serve terms to expire as of the date of the Annual Town Meeting in 1995, and One (1) associate member to serve terms to expire as of the date of the Annual Town Meeting in 1994, and One (1) member to serve a term to expire as of the date of the Annual Town Meeting in 1993.
- B. Thereafter, all appointments to the Board shall be for terms of Three (3) years.
- C. If state laws permits, the municipal officers may appoint up to Two (2) associate members to the Board. The Chairperson of the Board shall designate which shall serve in place of the absent member.
- D. Neither a municipal officer nor his or her spouse may be a member or an associate member of the Board.

Any member of the Board may be removed from the Board, for cause, by the municipal officer before expiration of his/her term, but only after notice and an opportunity for a hearing at which the member is in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend 3 consecutive Board meetings or

hearings without sufficient justification, or voting when the member has a “conflict of interest.”

- E. When there is a permanent vacancy of either a full or associate member, the Secretary shall immediately notify the Town Clerk. The municipal officers shall within 60 days appoint a person to serve for the unexpired term.

III. OFFICERS AND DUTIES:

- A. The officers of the Board shall consist of a Chairperson, Acting Chairperson and Secretary, who shall be elected annually by a majority of the Board.
- B. CHAIRPERSON. The Chairperson shall perform all duties required by law and these by-laws and preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint the committees found necessary to carry out the business of the Board.
- C. ACTING CHAIRPERSON. The Acting Chairperson shall serve in the absence of the Chairperson during the Chairperson’s absence, disability or disqualification.
- D. SECRETARY. The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Secretary shall also arrange proper and legal notices of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and shall prepare a complete record of each hearing, including: date(s), time(s), place(s) of the hearing(s); subject of the hearing; identification of each participant; and agreements that are made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusions; the decision of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.

IV. CONFLICT OF INTEREST:

- A. 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 pecuniary interest, which shall include pecuniary benefit to any member of the person’s immediate family (grandfather, father, wife, son, grandson, e.g.) or to his employer or the employer of any member of the person’s immediate family.

V. POWERS AND LIMITATIONS:

- A. The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:
1. The Board may interpret the provisions of any applicable town ordinance, which are called into question.
 2. The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable town ordinance.
 3. The Board may grant a variance only where strict application 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.
 4. 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 therefore, 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 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 or Town Ordinance;
- c. rendered by the General Assistance Administrator pursuant to the Ordinance for General Assistance Administration or the Maine statutes relating to general assistance;
- d. rendered by the Planning Board or the Selectmen pursuant to the Subdivision Regulations or the Maine subdivision statute;
- e. rendered by the Selectmen or the Assessors pursuant to 36 M.R.S.A. 841 and 30 M.R.S.A. 2060 (relating to the abatement of taxes);
- f. rendered by the Selectmen pursuant to the Ordinance for the Regulation and Issuance of Special Amusement Permits or 28 M.R.S.A. 702 (also relating thereto);
- g. rendered by the Selectmen or the Road Commissioner pursuant to the Street Design and Construction Standards Ordinance;
- h. rendered by the Selectmen pursuant to the Ordinance Regulating Town Cemeteries;
- i. rendered by the Planning Board or the Code Enforcement Officer pursuant to the ordinance relating to Flood Hazard Building Permit System and Review Procedures;
- j. rendered by the Selectmen pursuant to the Policy on Warning Sign Requests;
- k. rendered by the Selectmen pursuant to the Ordinance Covering Excavations in Public Places;
- l. rendered by the Code Enforcement Officer or Plumbing Inspector or Building Inspector pursuant to the Sanitary Code;

Note: This list will differ from one municipality to another, depending on what other ordinances have been adopted and which decisions the municipality wants to allow an applicant to appeal at the local level.

VI. MEETINGS:

- A. The regular meeting of the Board shall be held once every other month or as necessary.
- B. The annual organization meeting of the Board shall be the first regular meeting of the year.
- C. Special meetings of the Board may be called by the Chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given to each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
- D. The chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the Board which request shall specify the matters to be considered at such special meeting.
- E. The order of business at regular meetings of the Board shall be as follows: (A) roll call; (B) reading and approval of the minutes of the preceding meeting; (C) action on held cases; (D) public hearing (when scheduled); (E) other business; (F) adjournment.
- F. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the town or Board at a substantial disadvantage.

VII. VOTING:

- A. A quorum shall consist of Three (3) 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 Five (5) member Board, unless otherwise specified therein.

- D. A tie vote or favorable vote by a lesser number than the required majority 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. If the Board has associate members, the Chairperson shall appoint an associate member to act for the 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 associate member will act for the regular member until the case is decided.
- G. If the Board has no associate members, no regular member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon; however, where such a member has familiarized himself by such matter by reading the record, he or she shall be qualified to vote.

VIII. APPEAL PROCEDURE:

- A. Any person aggrieved by an action, which comes under the jurisdiction of the Board pursuant to the 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 at the office of the Town Clerk, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board.
- B. The fee to accompany application for an appeal shall be twenty-five (\$25) dollars. Checks are to be made payable to the Board of Appeals of the Town of Machiasport.

IX. HEARINGS:

- A. The Board shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of the completed appeal application.
- B. The Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in the municipality, at least seven days prior to the hearing. The Board shall also cause notice of the hearing to be given to the municipal officers, the Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least twenty (20) days prior to the date of the hearing.

C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.

D. The order of business at a public hearing shall be as follows:

1. The Chairperson calls the hearing to order.
2. The Chairperson determined whether there is a quorum.
3. The Chairperson gives a statement of the case and reads all correspondence and reports received.
4. The Board determined whether it has jurisdiction over the appeal.
5. The Board decides whether the applicant has the right to appear before the Board.
6. The Board determines which individuals attending the hearing are “interested parties.” “Interested parties” are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners and those who might be adversely affected by the Board’s decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the hearing. Municipal Officers, the Planning Board, the Code Enforcement Officer shall automatically be made parties to the proceeding.

Other person’s attending the hearing and federal, state, municipal, and other governmental agencies shall be permitted to make oral or written statements and to submit oral and written questions through the Chair.

7. The applicant is given the opportunity to present his or her case without interruption.
8. The Board and interested parties may ask questions of the appellant through the Chair.
9. The interested parties are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.

10. The appellant may ask questions of the interested parties and Board witnesses directly.
11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
12. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
13. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may continue to a later date, time and place of the continued hearing.
14. Written testimony may be accepted by the Board for seven (7) days after the close of the hearing.

E. The Board may waive any of the above rules if good cause is shown.

X. 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 part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, 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 (if any) 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 over these rules whenever a conflict occurs. In all other instances, the more restrictive rules shall apply.
- E. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board 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 Planning Board, the Code Enforcement Officer, and the municipal officers within seven (7) days of the decision.
- G. Decisions of the Board shall be immediately filed in the office of the Town Clerk 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 or occupancy within ninety (90) days from the date of the decision; however, the Board may extend this time an additional ninety (90) days.

XI. CONSIDERATIONS:

- A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties within thirty (30) days of its prior decision. A meeting to decide whether to reconsider shall be called by the Chairperson in accordance with article VI of these By-laws. The Board may conduct additional hearings and receive additional evidence and testimony.
- B. Reconsideration should be for one of the following reasons:
 - 1. The records 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 its jurisdiction.

XII. APPEAL TO SUPERIOR COURT:

- A. The decision of the Board of Appeals may be taken, within thirty (30) days after the decision is rendered, by any party to the Superior Court in accordance with the Maine Rules of Civil Procedure.

XIII. SEVERABILITY:

- A. The invalidity of any section or provision of these By-laws shall not be held to invalidate any other section or provision of the By-laws.