

**ZONING BOARD OF APPEALS ORDINANCE
FOR THE TOWN OF SKOWHEGAN
Adopted: March 8, 1999**

I. GENERAL PROVISIONS:

- A. The business of the Board shall be conducted in accordance with Maine Statutes, Town Ordinances, and Roberts' Rule of Order.
- B. It shall be the responsibility of the members of the Board to become familiar with all the duly enacted ordinances of the Town which they may be expected to act upon, as well as with the applicable State statutes.
- C. It shall be the responsibility of the members of the Board to become familiar with the community goals, desires, and policies as expressed in the Town of Skowhegan's Comprehensive Plan, now in effect, 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 municipal officers of the Town of Skowhegan for terms of five years.
- B. Neither a municipal officer nor his or her spouse may be a member of the Board.
- C. Any member of the Board may be removed from the Board, for cause, by the municipal officers, 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, but not be limited to, failure to attend four consecutive Board meetings or hearings without sufficient justification or voting when the member has a conflict of interest.
- D. When there is a permanent vacancy the Chairperson shall immediately notify the Town Clerk. The municipal officers shall, within sixty (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, Vice 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 this Ordinance 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.

C. VICE CHAIRPERSON. The Vice Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability, or disqualification.

D. SECRETARY. 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 by statute or this Ordinance as part of the various proceedings which may be brought before the Board. 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. All records to be maintained or prepared by the Secretary are public records, shall be filed in the Town Clerk's office, and may be inspected at reasonable times.

IV. ADMINISTRATIVE DUTIES:

Administrative duties, subject to the direction of the Board, Chairperson, and the Secretary, shall be performed by a member of the municipal office staff who shall take 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 staff person shall also arrange proper and legal notice of a hearing, attend to correspondence of the Board, and to other normal clerical duties of the Board. The staff person shall make 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; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of the facts and conclusions; the decision of the Board; and the date of issuance of the decision. All records shall be forwarded to the Secretary for review and comment and inclusion in the public record.

V. 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, excluding the member whose potential conflict is under consideration.

The term "conflict of interest" shall be construed to mean a direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (grandfather, father, wife, son, grandson, etc.) or to his employer or the employer of any member of the person's immediate family.

VI. POWERS AND LIMITATIONS:

The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:

- A. The Board may interpret the provision of any applicable Town Ordinance.
- B. The Board may approve the issuance of a special exception permit, or conditional use permit, in strict compliance with any applicable Town ordinances.
- C. The Board may grant a variance only where strict application of any Town ordinance, or provision thereof, that would cause undue hardship to the petitioner and the property. The words “undue hardship” as used in the subsection means:
 1. The property in question can not yield a reasonable return unless a variance is granted; and
 2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 3. The granting of a variance will not alter the essential character of the locality; and
 4. The hardship is not a result of action taken by the applicant or prior owners.
- D. The Board shall have the power to hear and determine all appeals by any person directly affected by any decision, action or failure to act with respect to any permits, variance or other required approval (hereinafter a Decision):
 1. rendered by the Code Enforcement Officer or the Planning Board pursuant to the Shoreland Zoning Ordinance;
 2. rendered by the Code Enforcement Officer or the Building Inspector relating to building code enforcement pursuant to any statute or Town ordinance;
 3. rendered by the Planning Board pursuant to the Town of Skowhegan’s Subdivision Standards Ordinance or the Maine subdivision statute;
 4. rendered by the Planning Board or Code Enforcement Officer pursuant to the Ordinance relating to Flood Hazard Building Permit System and Review Procedures;

5. rendered by the Planning Board pursuant to the Site Plan Review Ordinance.

VII. MEETINGS:

- A. The meetings of the Board shall be held as necessary.
- B. An annual organizational meeting of the Board shall be held in April.
- C. Meetings of the Board shall be called by the Chairperson. The Chairperson shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. 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 order of business at meetings of the Board shall be as follows:
 1. roll call,
 2. reading and approval of the minutes of the preceding meeting,
 3. action on held cases,
 4. public hearing (when scheduled),
 5. other business
 6. adjournment.
- E. 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 session except for consultation between the Board and its legal counsel concerning litigation or other legal matters.
- F. 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, constitutes the public 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, the petitioner's representative or agent, the Planning Board, agency or officer and the municipal officers within seven (7) days of the Board's decision.

VIII. 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.
- 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 membership of the Board unless otherwise specified herein.
- 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, he/she shall not be counted by the Board in establishing the quorum for such matter.
- F. No 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 themselves with such matter by reading the record, he or she shall be qualified to vote.

IX. APPEAL PROCEDURE:

Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section VI 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 the appeal, the Town Clerk shall notify the Chairperson of the Board.

X. HEARING:

- A. The Board shall schedule a public hearing on all appeals applications within thirty (30) days of the filing of a 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, the date of the publication to be at least seven (7) days prior to the hearing. The Board shall also cause notice of the hearing to be given to owners of the property abutting that for which the appeal is taken at least seven (7) 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 determines whether there is a quorum

3. The Chairperson gives a statement of the case, reads all correspondence, and reports received.
4. The Board determines 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 persons attending the hearing and Federal, State, Municipal and other governmental agencies may be permitted to make oral or written questions through the Chair.

7. The appellant 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 through the Chair.
11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
12. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.

The Chairperson, after an affirmative vote of the Board, may waive any of the above if good cause is shown.

XI. DECISION:

- A. Decision by the Board shall be made within 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 become a part of the record and shall include a statement of findings and conclusions, as well as the reasons and basis therefor, upon all 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 State statute shall take precedence over the standard of these rules whenever a conflict occurs. In all other instances, the more restrictive rules applies.
- E. The Board may reverse the decision or failure to act, of the Code Enforcement Officer or the 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 the Board's decision shall be sent by certified mail 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 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 by an additional ninety (90) days.

XII. RECONSIDERATION:

- A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any changes in its original decision within thirty (30) days of its prior decision.
- B. The reasons for reconsideration shall be for, but not limited to, one of the following:
 - 1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based on.
 - 2. The Board misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction.

XIII. APPEAL TO SUPERIOR COURT:

The decision of the Board of Appeals may be appealed, 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.

XIV. 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.