

BOARD OF APPEALS ORDINANCE

for the Town of Georgetown, Maine

Adopted June 18, 1994
Amended June 17, 2000
Amended June 17, 2017

Amended June 16, 2001
Amended June 14, 2008
Amended June 17, 2023

Amended June 13, 2009
Amended June 12, 2010

Section I. General Provisions

- A. The Board of Appeals is established pursuant to 30-A MRSA §§ 2691, 3001, and 4353.
- B. The business of the Board shall be conducted in accordance with Maine State statutes and Town ordinances.
- C. It shall be the responsibility of each member of the Board to become familiar with all the ordinances of the Town which it may be expected to act upon as well as with applicable State statutes, the current edition of the "Manual for Local Land Use Appeals Boards" of the Maine Municipal Association (the MMA Manual), and this ordinance.
- D. It shall be the responsibility of each member of the Board to become familiar with the community's goals, desires, and policies as expressed in the Georgetown Comprehensive Plan and to grant the minimum relief which will ensure that the goals and policies of the plan are preserved.

Section II. Powers and Limitations

- A. The Board shall have jurisdiction to hear appeals and to take actions to the extent that such jurisdiction and powers are assigned to the Board by ordinances of the Town of Georgetown or by State statutes. If a State statute or Town ordinance does not specifically provide that the Board may act upon the issues covered in an application, the Board has no jurisdiction.
- B. The Board shall have the following powers, to be executed only upon a written administrative appeal or variance application by a party with standing to make the appeal or application:
 - 1. To hear and determine appeals, made under applicable Town ordinances or State statutes, by any person or entity aggrieved by a decision, action, or failure to act by the Planning Board, the Code Enforcement Officer, or other Town Officers with respect to an application for a permit, license, or other required approval.
 - 2. To interpret the provisions, which are called into question, of any applicable Town ordinance.
 - 3. To grant variances from the provisions of Town land use ordinances as provided in those ordinances and in accordance with this Ordinance and applicable State statutes.
- C. The Board is empowered to adopt and to amend, by a majority vote of its members, bylaws to govern its functions as well as such other procedural rules, application forms, and certification forms as it deems necessary for the performance of its functions. Copies of the bylaws, procedural rules, and forms shall be provided to the Board of Selectmen, the Town Clerk, the Planning Board, and the Code Enforcement Officer; and copies shall be provided to any other concerned persons or entities upon request.
- D. The Board may obtain goods and services as necessary for its proper functions within the limits of funds appropriated for that purpose.

Section III. Appointments and Members

- A. The Board shall consist of five full members and two associate members appointed by the Selectmen for terms of five years each. Members shall serve until the annual Town Meeting of the year of their designated termination, or until replaced by the Selectmen shortly thereafter, except that any member may resign without reason or notice at any time.

- B. The terms of full members shall be staggered so that the five-year term of one member expires in each year as of the date of the annual Town Meeting. If any full member resigns or is removed from the Board before the expiry of his or her term, the Selectmen shall appoint a new member to fill the unexpired term.
- C. The terms of associate members shall be staggered so that the five-year terms of both associate members do not expire in the same year. If an associate member resigns, is appointed as a full member of the Board, or is removed from the Board before the expiry of his or her term, the Selectmen shall appoint a new associate member to fill the unexpired term.
- D. Neither a Selectman, Planning Board member, or Code Enforcement Officer, nor his or her spouse, may be a full or associate member of the Board.
- E. Any member of the Board may be removed from the Board, for cause, by the Selectmen before expiration of his or her term, but only after notice and an opportunity for a hearing at which the member has the opportunity to refute specific charges against him or her. The term "for cause" shall include, but not be limited to, failure to attend three consecutive Board meetings or hearings without sufficient justification, or voting when the member has a conflict of interest or bias.
- F. When there is a permanent vacancy of either a full or associate member, the Secretary of the Board shall immediately notify the Board of Selectmen. The Selectmen shall within sixty days appoint a person to serve as replacement.

Section IV. Officers and Duties

- A. The officers of the Board shall consist of the Chairperson and Secretary who shall be elected at the Board's first meeting after the annual Town Meeting by a majority of the Board, and an Acting Chairperson elected by a majority of the Board, as necessary in the absence, disability, or disqualification of the Chairperson,
- B. The Chairperson shall perform all duties required by statute and this ordinance, and shall 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 needed for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Board. The Chairperson shall, between meetings, conduct the routine housekeeping business of the Board, subject to the review and reconsideration of the Board at its next meeting.
- C. An Acting Chairperson shall have all the powers of the Chairperson during the Chairperson's absence, disability, or disqualification.
- D. 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 each question, or if absent or failing to vote, indicating such fact. The Secretary shall also arrange proper and legal notice for hearings and attend to correspondence of the Board, and to such other duties as are normally carried out by a secretary. The Secretary shall keep a complete record of all resolutions, transactions, correspondence, findings, and determinations of the Board. The complete record of each hearing shall include the date, time, and place of the hearing; the subject of the hearing; identification of each participant; any agreement 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 in the Town Office during regular business hours.

Section V. Conflict of Interest and Bias

- A. Any member who feels he or she has a conflict of interest or bias about any issue or individual before the Board may recuse himself or herself from any related proceedings, including any discussion and voting.
- B. Any question of whether a particular issue involves a conflict of interest or bias sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member whose potential conflict or bias is under consideration. Any member with a conflict of interest or bias

about any issue or individual before the Board must be disqualified from discussion and voting on any question involved.

- C. If a Board member is directly or indirectly, by blood or marriage, the owner of ten percent or more interest in a corporation or other economic entity making an application or appeal to the Board, or if a Board member (or a member of his or her family to the sixth degree, or his or her employer, or the employer of a member of his or her family to the sixth degree) has a direct or indirect pecuniary interest in the outcome of the application or appeal, that Board member shall be considered to have a conflict of interest.
- D. A Board member shall be considered to have bias with respect to an application or appeal before the Board if, for example, situations such as the following exist:
 - 1. The Board member or the Board member's spouse is related within the sixth degree to the applicant, appellant, or another party with an interest in the outcome of the application or appeal, with the additional provision that in the case of an appeal from a zoning ordinance decision, bias will also be considered to exist if the Board member or the Board member's spouse is related within the sixth degree to a member of the Planning Board or the Code Enforcement Officer.
 - 2. For appeals of a Planning Board or Code Enforcement Officer decision, bias will exist if the Board member or the Board member's spouse is related within the sixth degree to a Planning Board member or the Code Enforcement Officer.
 - 3. The Board member has demonstrated bias, with respect to the general issues or the individuals involved in the application or appeal, by statements which are such as to preclude an open-minded judgment by the Board member about the specific issues and outcome of the application or appeal.

Section VI. Appeal and Variance Procedures

- A. Administrative Appeals.
 - 1. Any person or entity aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section II B.1 and B.2 must file a statement of administrative appeal on forms provided at the office of the Town Clerk.
 - 2. An Application for an Administrative Appeal must be filed with the Town Clerk within 30 days of the written notice of that action, except that the Board, upon a showing of good cause such as an extraordinary health or other serious situation, or inability to have known the decision, may waive the 30-day requirement, so long as the waiver will not cause harm to another party.
 - 3. To have standing to make an administrative appeal, the person or entity aggrieved by an action under the jurisdiction of the Board must demonstrate, in the Application for an Administrative Appeal, that the action will cause a direct and personal injury to that person or entity different from the injury suffered by the general public.
- B. Variance Requests.
 - 1. Any landowner informed by the Planning Board or Code Enforcement Officer that they need a variance to receive a building permit must file an Application for a Variance on a form provided at the office of the Town Clerk.
 - 2. The Application for a Variance must be filed with the Town Clerk within 90 days of the Planning Board or Code Enforcement Officer action, except that the Board, upon a showing of good cause such as an extraordinary health or other serious situation, may waive the 90-day requirement.
 - 3. To have standing to make a variance request, the applicant must be the property owner or the designated agent of the property owner.
- C. The Board will review the statement of appeal, or application for a variance and will determine: (a) if the application is complete, (b) if the Board has jurisdiction to take action and (c) if the person or entity has standing to make the appeal. The Board will notify the person or entity filing the statement of appeal, or application for a variance, of its determination within seven days of the Board's action.
- D. Upon receipt of the statement of appeal or application for a variance, the Town Clerk shall notify the Chairperson of the Board of the receipt of the appeal or application within twenty-four hours.

Section VII. Meetings

- A. Meetings of the Board shall be held as necessary and at times and places as determined by the Chairperson. Meetings of the Board will also be held if requested by a majority of the voting members of the Board or by the Selectmen. Notice of the time, date, and place of all Board meetings shall be posted in public places in the Town. Except in unusual situations, and with approval of the Chairperson, postings will occur at least seven days before the meeting. Hearings on appeals, as defined in Section VIII below, will be conducted as meetings of the Board.
- B. The annual organization meeting of the Board shall be the first meeting after the annual Town Meeting.
- C. All meetings shall be conducted following a written agenda. These shall proceed generally in the following order: (1) roll call and quorum determination; (2) dealing with minutes of preceding meeting; (3) action on pending cases; (4) public hearings (s) (when scheduled); (5) action on new cases and other business; (6) adjournment.
- D. All meetings of the Board shall be open to the public, except for executive sessions. No votes may be taken by the Board except in public meeting. Participation by other than Board members is limited to the public hearings and/or to responses to inquiries from Board members, as appropriate to the business at hand and/or as shall be allowed by the Chairperson who shall have broad latitude in the conduct of meetings. The general public shall have no right to be heard at a hearing on an administrative appeal.

Section VIII. Hearings

- A. The Board shall schedule public hearings on all appeals and variance applications within 35 days of the filing of a completed appeal or variance application, unless this time period is extended by the parties.
- B. The Board shall cause notice of the date, time, and place of the hearing, the location of the property, 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 town, at least seven days prior to the hearing. Such notice shall also go to the Selectmen, the Planning Board, the Code Enforcement Officer, and abutting property owners at least seven days prior to the date of the hearing.
- C. If in the opinion of the Chairperson it is necessary to recess for continuation on another day, scheduling the continuation will not be constrained by the notification time limits set forth in Sections VII.A and VIII.A. Adequate notice to the public will be deemed to have been given if those persons present at the time of recess are advised at that time of the date and place for continuation.
- D. The Board shall conduct hearings following the rules outlined in the latest edition of the MMA Manual, a copy of which is available in the Town Office.
- E. During a hearing, the Board may waive any of the above rules by an affirmative vote of four voting members if good cause is shown.

Section IX. Voting

- A. All members of the Board (full and associate) may take part in any discussion or hearing. Only full members of the Board, or associate members appointed to act in the place of a full member as defined in ~~Article VII.B subsection B~~ below, may make motions or vote on matters concerning findings, conclusions, or decisions on applications and appeals before the Board.
- B. The Chairperson may appoint an associate member to act:
 - 1. As a full member if the Board has fewer than five full members at a meeting;
 - 2. For a full member who (1) is disqualified from voting on an application or appeal currently before the Board, or (2) is unable to attend a meeting at which Board business or an application or appeal is to be considered, or (3) was absent from a previous meeting at which an application or appeal currently under consideration before the Board was discussed.

3. As a full member for a specific application or appeal until the case is decided
- C. A quorum shall consist of three members of the Board authorized to vote upon the issues which may be considered at the meeting of the Board for which the quorum is required.
- D. If a member has a conflict of interest or bias concerning a matter before the Board, said member shall not be counted by the Board in establishing the quorum for the matter.
- E. All matters before the Board shall be decided by a recorded vote. Decisions on any matter before the Board shall require that votes in favor of the motion be cast by at least three members of the Board.
- 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, to the satisfaction of the Chairperson, familiarized himself or herself with such matter by reading the record and listening to the recording, if any, he or she shall be qualified to vote.
- G. A tie vote, or a majority vote by a number lower than three, shall require the Board to reconsider the voted issue in an effort to reach a decision. Failure to obtain the affirmative votes of at least three members of the Board shall be considered a rejection of the application or appeal under consideration.

Section X. Decisions

- A. Decisions of the Board shall be made no more than 35 days from the conclusion of the final hearing or sooner, as required by specific ordinance.
- B. The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The recording and the transcript of testimony and discussion, 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 of fact and conclusions of law, as well as the reasons or basis thereof, upon all the material issues of fact, law, or discretion presented and the appropriate order, relief, or denial thereof.
- C. The Board, in reaching its decisions, shall be guided by standards specified in the applicable State statutes, Town ordinances, policies specified in the Comprehensive Plan, and findings of fact and conclusions of law by the Board in each case. If provisions differ in ordinances, the more restrictive rule shall apply.
- D. If information from the Planning Board record is insufficient for the Board to decide an administrative appeal of a Planning Board decision, the Board may remand the matter to the Planning Board with recommendations. The Board shall retain jurisdiction until its decision is final.
- E. Appeals of decisions by the Code Enforcement Officer shall be reviewed by the Board of Appeals on a de novo basis, and the Board of Appeals may consider any evidence produced by the appellant or Code Enforcement Officer whether or not it was available to the Code Enforcement Officer at the time of the decision in question.

Appeals of the decisions by the Planning Board shall be reviewed by the Board of Appeals on an appellate basis, and the review shall be limited to the record before the Planning Board at the time of the decision in question.

- F. In deciding an administrative appeal, the Board shall:
 1. Take recorded votes on findings of fact suggested by the application and testimony, and
 2. Take separate roll-call votes on conclusions of law, including the reasons therefore.
- G. In deciding whether to grant a variance, the Board shall:
 1. Take recorded votes on findings of fact and

2. Take separate roll-call votes on each of the criteria for granting a variance required by the relevant Town ordinance, and any conclusions of law, including the reasons therefore.
- H. After F. or G. above has been accomplished, the Board, through the Chairperson, shall summarize the satisfaction of variance criteria (where relevant), the findings of fact, and the conclusions of law. The Board shall then take a vote on whether to approve or reject the application or appeal.
- I. Within seven days of the decision notice shall be sent by mail or hand delivered to the applicant or to his or her agent, and delivered to the Code Enforcement Officer, the Planning Board, and the Board of Selectmen.
- J. 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 each decision shall be entered in the official records and minutes of the Board.
- K. Unless otherwise specified, any order or decision of the Board for a use requiring a permit shall expire if a building permit for the use is not obtained by the applicant within 90 days from the date of the decision; however, the Board may extend this time up to an additional 90 days.
- L. If the board grants a variance under this section, it shall prepare a certificate in recordable form 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. The applicant must record this certificate in the local registry of deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided above. The date of the final written approval shall be the date stated on the written approval.

Section XI. Reconsideration

In accordance with 30-A MRS § 2691.3.F, the Board of Appeals may reconsider any decision 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 being reconsidered. A vote to reconsider an action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony. Appeal of a reconsideration decision to Superior Court must be made within 15 days after the decision on reconsideration.

Section XII. Appeal to Superior Court

- A. Any party may, within forty-five days of the date on which the Board has signed its final decision, take an appeal of that decision to the Superior Court.
- B. Notwithstanding Section XII.A above, appeal of a reconsidered decision to the Superior Court must be made within fifteen days of that decision.

Section XIII. Severability

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not be held to invalidate any other section or provision of this ordinance.

Section XIV. Effective Date

Revisions to this Ordinance shall take effect following approval at the regular Town Meeting.