

## **Ordinance to Establish Town of Albion Board of Appeals**

### 1. Establishment

A Board of Appeals is hereby created in accordance with the provisions of Title 30-A, MRSA, Section 2691.

### 2. General Provisions

1. Business of the Board shall be conducted in accord with Maine statutes, Town ordinances and Robert's Rule of Order.

2. 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.

3. It shall be the responsibility of the Board to become familiar with the community goals and policies as expressed in Albion's Comprehensive Plan, and grant the minimum relief necessary to preserve the intent of the Plan and see that substantial justice is done.

### 3. Appointment and Composition

1. The Municipal Officers shall appoint members of the Board of Appeals, whose term shall be dated as of the date of the annual meeting required under section four (4) below.

2. The Board shall consist of five (5) members serving staggered terms of three (3) years.

3. Due to potential conflicts of interest, persons holding the following positions at the same time are ineligible to serve on the Board: municipal officers or spouses thereof, Planning Board members or associate members, Code Enforcement Officer and Plumbing Inspector.

4. Within sixty (60) days of the annual appointment of members, the Board shall hold an annual organizational meeting to administer the oath of office to new members, review its responsibilities under this ordinance and provide copies of existing land use ordinances to all members. This meeting shall be called by the existing chairperson of the Board, or, if that position is vacant, by the municipal officers. The Town Clerk shall attend to administer the oath of office.

5. At the annual meeting, the Board shall elect a chairperson, acting chairperson and secretary from its membership for a term of one (1) year. The secretary shall provide for the keeping of the minutes of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be public record.

6. Any member of the Board may be removed from the Board for cause, by the municipal officers before the expiration of his, or 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 or her. The term "for cause" shall include failure to attend three (3) consecutive Board meetings or hearings without sufficient justification, or voting when the member has a conflict of interest.

7. When there is a permanent vacancy, the secretary shall immediately notify the Town Clerk. The municipal officers shall within sixty (60) days appoint a person to serve for the unexpired term.

#### 4. Meetings

1. Other than the annual organizational meetings, the Board shall meet as necessary to perform its duties.

2. Meetings may be called by the chairperson. At least seven (7) days written notice of the time, place and business of the meeting shall be given each member of the Board, the Selectmen, the Planning Board, the Code Enforcement Officer and any parties of interest. When a public hearing on an appeal is scheduled to be heard, public notice and notice to abutters is also required (see section 6.4 below).

3. The chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three (3) members of the Board; the request shall specify the matters to be considered at any such special meeting.

4. 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.

#### 5. Voting

1. A quorum shall consist of four (4) members of the Board.

2. 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.

3. 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.

4. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

5. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.

6. No member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon or, alternatively, has become thoroughly familiarized with such matter by reading the record.

## 6. Powers and Duties

1. Administrative Appeals. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.

2. Variance Appeals. To authorize variances upon appeal, within the limitations set forth in this Ordinance.

a) Variances may be granted only from dimensional requirements including but not limited to frontage, lot area, lot width, structure height, percent of lot coverage, and setback requirements.

b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

c) The Board shall not grant a variance unless it finds that:

(1) The proposed structure, or use, would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and

(2) The strict application of the terms of this Ordinance would result in undue hardship.

The term undue hardship shall mean all of the following:

aa) That the land in question cannot yield a reasonable return unless a variance is granted;

bb) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

cc) That the granting of a variance will not alter the essential character of the locality; and

dd) That the hardship is not the result of action taken by the applicant or a prior owner.

d) The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

e) In areas subject to the Mandatory Shoreland Zoning Act, a copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

f) If a variance is granted under this section, 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. The certificate must be recorded in the local registry of deeds within thirty (30) days of final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this provision.

## 7. Appeal Procedure

1. Time Limit. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

2. Written Notice. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:

a) A concise written statement indicating what relief is requested and why it should be granted.

b) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief requested.

3. Record of Case. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

4. Public Hearing. The Board of Appeals shall hold a public hearing on the appeal within thirty (30) days of its receipt of an appeal request. The Board shall send written notice of this hearing to the Planning Board, Code Enforcement Officer, Board of Selectmen, applicant, abutters to the property involved, and any other interested parties at least seven (7) days prior to the date of the hearing. A legal notice shall also be posted in a newspaper of general circulation at least seven (7) days prior to the hearing.

## 5. Decision by Board of Appeals

a) Burden of Proof. The person filing the appeal shall have the burden of proof.

b) Action on Appeal. Following the public hearing on an appeal the board may affirm, affirm with conditions, or reverse the decision of the Code Enforcement Officer or Planning Board. 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. When errors of administrative procedures or interpretations are found, the case shall be remanded back to the Code Enforcement Officer or Planning Board for correction.

c) Time Frame. The Board shall decide all appeals within thirty (30) days after the close of the hearing, and shall issue a written decision on all appeals. Copies shall be provided to the

applicant, Planning Board, Selectmen, Code Enforcement Officer and other interested parties. In the case of a variance granted within the shoreland zone, a copy will also be proved to the Department of Environmental Protection within fourteen (14) days of the decision.

f) Findings. 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, and the appropriate order, relief or denial thereof.

6. Appeal to Superior Court. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals.

7. Reconsideration. The Board of Appeals may reconsider any decision reached within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.