

# **BOARD OF APPEALS ORDINANCE FOR THE TOWN OF ALNA**

## **I. GENERAL PROVISIONS:**

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town ordinances and Roberts' Rules 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 three members and one associate member appointed by the Board of Selectmen for terms of three years.
- B. Neither a Selectman nor his or her spouse, nor a Planning Board member or his or her spouse may be a member or an associate member of the Board.
- C. Any member of the Board may be removed from the Board, for cause, by the Board of Selectmen 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 three consecutive Board meetings or hearings without sufficient justification, voting when the member has a "conflict of interest", or for violation of Maine Statutes.
- D. When there is a permanent vacancy of either a full or associate member, the Secretary shall immediately notify the Board of Selectmen. The Selectmen shall within 30 days appoint a person to serve for the unexpired term.

## **III. OFFICERS AND DUTIES:**

- A. The officers of the Board shall consist of a Chairman and Secretary, who shall be elected annually by a majority of the Board.
- B. CHAIRMAN. The Chairman shall perform all duties required by law and these by-laws and preside at all meetings of the Board. The Chairman 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. SECRETARY. The Secretary shall keep minutes of all Board proceedings, showing the vote of each member upon every question. The Secretary shall also arrange proper and legal notice of hearings and attend to other duties as are normally carried out by a secretary. The secretary shall keep a record of all hearings including: subject of the hearing, identification of each participant, any agreements 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.

#### IV. 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, except the member whose potential conflict is under consideration.

The term “conflict of interest” shall be construed 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. A Board member who owns or has an interest in abutting property shall be deemed to have a conflict of interest.

#### V. POWER 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 is called into question.
  2. The Board may review Planning Board decisions with regard to 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 of any applicable 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 their approval (hereinafter a "Decision):
- a. Rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning ordinance;
  - b. Rendered by the Code Enforcement Officer relating to the building code enforcement pursuant to any statute or Town ordinance;
  - c. Rendered by the General Assistance Administrator pursuant to 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 Code Enforcement Officer pursuant to the Sanitary Code;
  - g. Rendered by the Selectmen relating to grievances and disciplinary procedures with respect to Town officers.

VI. MEETINGS:

- A. Special meetings of the Board may be called by the chairman. At least forty-eight (48) hours notice of the time, place and business of the meeting shall be given each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
- B. The Chairman shall call a special meeting within ten (10) days of receipt of a written request from any member of the Board whose request specifies the matters to be considered at such special meeting.
- C 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 purposes allowed by law.

D. All meetings are to be posted in a legal manner.

VII. VOTING:

A. A quorum shall consist of two 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, the member present shall be entitled to request the chairman 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 entire membership of the Board unless otherwise specified herein.

D. A tie vote 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. The chairman shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent for a substantial portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.

VIII. APPEAL PROCEDURE:

A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to 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 Town Office to the attention of the Chairman, Alna Board of Appeals, setting forth the ground for his/her appeal.

B. The fee to accompany applications for appeal shall be twenty-five (\$25) dollars. Checks are to be made payable to Board of Appeals of the town of Alna.

IX. HEARINGS:

A. The Board shall schedule a public hearing on all appeals applications within (30) thirty 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, at least two times, the date of the first publication to be 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 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 Chairman calls the hearing to order, determines the quorum, and provides all correspondence and reports received regarding the case.
  - 2. The Board determines whether it has jurisdiction over the appeal, whether the applicant has the right to appear before the Board, and 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 shall be permitted to make oral or written statements and to submit oral and written questions through the Chair.
  - 3. The appellant is given the opportunity to present his or her case without interruption.
  - 4. The Board and interested parties may ask questions of the appellant through the Chair.
  - 5. The interested parties are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
  - 6. The appellant may ask questions of the interested parties and Board witnesses directly.
  - 7. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
  - 8. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.

9. 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.
10. Written testimony may be accepted by the Board for seven 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 chairman.
- 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 of these rules whenever a conflict occurs. In all other instances, the more restrictive rule 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 the Ordinances of the Town of Alna 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 Selectmen 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.
- 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 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 and make any change in its original decision within

30 days of its prior decision. A meeting to decide whether to reconsider shall be called by the Chairman 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 record 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 beyond 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 the party to the decision to Superior Court in accordance with the Maine Rule of Order, Civil Procedure.

XIII. SEVERABILITY:

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