



Town of Bremen

Board of Appeals Ordinance

March 30, 2018

Section 1. Establishment

There is hereby established a Board of Appeals pursuant to the Maine Constitution, Article VIII and the laws of the State of Maine at 30-A M.R.S.A. Sections 2691, 4352, 4353, and 3001, as enacted and as hereafter amended.

Section 2. Appointment

- A. Members of the Board of Appeals shall be appointed by the Selectmen and be sworn in by the municipal clerk.
- B. The Board shall consist of five (5) members and two (2) alternate members, all of whom must be registered voters in the Town of Bremen.
- C. The term of each member shall be three (3) years, except the initial appointments which shall be for one, two or three years, with alternate members appointed for three years.
- D. When there is a permanent vacancy, the Selectmen shall appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, when a member fails to attend four (4) consecutive regular meetings without a reasonable excuse, or when a member ceases to be a voting resident of the Town. The Selectmen may remove a member of the Board by majority vote, for cause, after notice and hearing.
- E. A Selectman, a Planning Board member or alternate, or the Code Enforcement Officer may not serve as a member or alternate member of the Board.

Section 3. Organization, Rules and Procedures

- A. The Board shall elect a chair from among its full voting members and create and fill such other offices as it may determine. The term of all offices shall be one (1) year with eligibility for reelection.
- B. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chair, the chair shall designate an alternate member to sit in his or her place.

- C. Whenever it is not clear whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon, the question shall be decided by a majority vote of the members, except the member who is being challenged.
- D. An alternate member may attend all meetings of the Board and participate in its proceedings but may vote only when he or she has been designated by the chair to sit for a member.
- E. The chair shall call a meeting when there is business to conduct.
- F. A meeting of the Board may not be held without a quorum consisting of three (3) members or alternate members authorized to vote. Action may not be taken, or an issue decided by the Board, without at least three (3) concurring votes on the issue before the Board. The result of a tie vote or a vote with less than three (3) concurring votes is a negative vote and/or denial.
- G. The chair shall vote on all motions, and a member may abstain from voting only after providing an explanation.

Section 4. Duties and Powers

- A. The Board may adopt rules and procedures for transaction of business, and the Town shall keep a record of its resolutions, transactions, correspondence, findings and determinations.
- B. The Board shall file all rules and procedures and subsequent revisions with the municipal clerk. Copies shall be provided to the municipal officers for their information.
- C. The Board shall perform such duties and exercise such powers as are provided by this Ordinance and the laws of the State of Maine.

Section 5. Severability Clause

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

Section 6. Jurisdiction

- A. The Board is authorized to hear appeals from decisions made under each of the Town's ordinances.

- B. The Board's authority does not include hearing appeals from the enforcement decisions made by the Selectmen.

Section 7. Types of Appeals

The Board shall consider the following appeals:

A. Administrative Appeal of Planning Board Decisions

1. The Board shall hear and decide appeals where it is alleged there is an error in any decision, order, requirement, determination made or refusal to act by the Planning Board.
2. The Board may reverse the decision of the Planning Board only upon finding that the decision is clearly contrary to a specific provision of the ordinance, that the provision has been clearly misinterpreted or that the findings of fact supporting the decision are clearly not supported by substantial evidence in the record.
3. Administrative appeals of Planning Board decisions may not be considered *de novo*.
4. The Board's review, on an appeal from a decision of the Planning Board, shall be limited to a review of the record that was the basis of the decision, and no additional factual matters may be considered. In the event the record of the Planning Board is determined by the Board to be inadequate for review, the Board may order that the matter be remanded to the Planning Board for completion. In any remand order, the Board shall provide written notice of the deficiencies in the record and shall specify a date by which a completed record shall be submitted to the Board. Such date shall be, without good cause, no fewer than 30 days and no more than 60 days from the date of the remand order.
5. The Board may receive written briefs and hear oral argument from the parties or their designated representatives but shall not receive or consider new evidence.

B. De Novo Appeal of all other Decisions

1. The Board shall hear and decide appeals where it is alleged that there is an error in any decision, order, requirement, determination made or refusal to act by the deciding authority other than the Planning Board under the applicable ordinance.
2. The Board may reverse the decision of the deciding authority only upon finding that the decision is clearly contrary to a specific provision of the ordinance, that the provision has been clearly

misinterpreted or that the decision clearly was not supported by substantial evidence. The Board may also affirm, modify, and/or add or delete conditions to the decision or permit being reviewed if such modification, addition or deletion of conditions cures the errors of the deciding authority.

3. *De Novo* appeals of these decisions shall be considered *de novo*. The deciding authority shall be a party to the appeal.
4. The Board's review may consider all relevant evidence, including new and/or additional factual matters that were not considered or known by the deciding authority.
5. The Board may hear witnesses, admit documents, receive written briefs, and hear oral arguments from the parties or their designated representatives.
6. The Rules of Evidence shall not apply. Any evidence that the Board deems relevant may be admitted and relied upon in the Board's decision.

Section 8. Variances

A. Standard Variance

A standard variance may be granted by the Board under the following conditions:

1. Variances may be granted only for height, minimum lot size, minimum lot coverage, structure size, road or sideline setbacks, shore frontage, road frontage, and open space requirements.
2. Variances may not, under any circumstances, be granted for establishment of any uses otherwise prohibited.
3. The Board may not grant a variance unless it finds that all the following criteria are met:
 - 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 the general conditions in the neighborhood;
 - c. that the granting of a variance will not alter the essential character of the locality; and

- d. that the hardship is not the result of action taken by the applicant or a prior owner.
4. A hardship may be found by the Board when the ordinance, as applied to the applicant's property, substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put. Mere inconvenience to the property owner shall not satisfy this requirement. Financial hardship alone or pleading that a greater profit may be realized from the applicant's property were a variance granted shall not be sufficient evidence of necessary hardship.
5. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end.
6. This authority is intended to implement and to be consistent with 30-A M.R.S.A. §4353(4).

B. Disability Variance

1. Dwelling Access

The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling.

The term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.

2. Garage

The Board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than two (2) times the width and length of the noncommercial vehicle. The owner shall submit to the Board proposed plans for the structure with the request for the variance pursuant to this paragraph.

For purposes of this subsection, “noncommercial vehicle” means a motor vehicle as defined in 29-A M.R.S.A. §101, sub-§42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to 29-A M.R.S.A. §521 and owned by the person with the permanent disability.

3. Conditions

The Board may impose conditions on the variance granted pursuant to this section, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

For the purpose of this section, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. §4353-A. All medical records submitted to the Board and any other documents submitted for the purpose of describing or verifying a person’s disability are confidential.

This authority is intended to implement and to be consistent with 30-A M.R.S.A. §4353(4-A).

C. Building Violation Variance

The Board may hear and decide variance requests in specific cases where existing buildings are found to be in violation of the ordinance requirements and where the Board concludes that allowing the building to remain in its existing location would not be contrary to public health, safety or welfare.

Before granting a variance under this subsection, the Board shall find that the setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the applicant.

The granting of a request under this subsection shall permit the existing building or structure to remain. Any future expansion, enlargement or relocation of the structure is prohibited.

Section 9. Procedure

A. Making an Appeal

An administrative appeal may be taken to the Board by an aggrieved person from any administrative decision of the Planning Board. An appeal shall be applied for within thirty (30) days of the actual decision date, with the payment of a fee as set by the Selectmen.

An appeal shall be made by filing with the Board a written notice of appeal, on the Town's application form, specifying the grounds for such appeal, including stating the section of the ordinance claimed to have been misinterpreted or misapplied or the facts that are in dispute.

B. Requesting a Variance

An application for a variance may be filed at any time directly with the Board in accordance with the procedures below:

1. A variance application shall be applied for with the payment of a fee as set by the Selectmen.
2. The applicant shall submit:
 - a. A sketch drawn to scale of 1 inch to 10 feet showing measurements for lot lines, location of existing buildings and other physical features pertinent to the variance request. For large lots, the scale may be changed, or the sketch may be for only the affected portion of the lot.
 - b. A concise written statement stating what variance is requested and the reasons for the request.
 - c. A completed application on the Town's application form.

C. Procedure

1. The Board shall notify the Selectmen, Planning Board, Code Enforcement Officer, deciding authority, and applicant of the appeal or application.
2. Upon being notified of an appeal, the deciding authority or Planning Board shall transmit to the Board, at least five (5) days before the first meeting, all the documents and records specifying the record of the decision appealed.
3. The Board shall hold its first meeting on the appeal or application within thirty-five (35) days of its receipt of an appeal or application, or later if agreed to or requested by the applicant.
4. The Board may hold a public hearing on the appeal or application within thirty-five (35) days of its first meeting or later if agreed to or requested by the applicant.

D. Hearing Procedures

1. In *de novo* appeals and variance applications the Board may receive oral or documentary evidence, but exclude irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her case or defense by oral or documentary evidence.
2. Documentary evidence for administrative appeals of Planning Board decisions may only consist of the Planning Board's record and evidence considered by the Planning Board.
3. In all *de novo* appeals and applications, the applicant shall provide to the Board, at least five (5) days before the first meeting, a minimum of eight (8) copies of the documentary evidence.
4. Publication Notice:

The Town shall publish notice of any public hearing at least ten (10) days in advance in a newspaper with general circulation in the Town. The public notice shall contain, at a minimum, the name of the applicant, the location of the property at issue (if applicable), a description of the relief requested, and the date, time and place of the public hearing. The Town shall also post the notice on its website and distribute it to those on its e-mail list.
5. Mail Notification:

The Town shall notify in writing the applicant, landowners of record within five hundred (500) feet of the affected property, the Planning Board, the Selectmen, and the deciding authority at least ten (10) days in advance of the first Board meeting or hearing by regular mail. The owners of the property entitled to notice shall be considered to be those shown on the current Town tax records. Failure of any property owner to receive a notice of a meeting or public hearing shall not necessitate another hearing or invalidate any action by the Board.
6. At any meeting or hearing, the Board shall determine the order of presentation of evidence and argument. If permitted, questions from the public shall be asked through the chair. All persons at the meeting or hearing shall abide by the order of the chair.
7. At any meeting or hearing, a party may be represented by agent or attorney.
8. For all appeals, the deciding authority or representative of the Planning Board shall attend all meetings and hearings and may

present to the Board all plans, photographs, or other materials that were considered at the time of the decision under appeal and that constitute the record for the decision. In *de novo* appeals of deciding authority decisions, new evidence may be presented that was not considered at the time of the decision under appeal.

9. In administrative appeals, the transcript of testimony, if any, and exhibits together with all documents and requests filed in the proceedings, shall constitute the record.
10. The person filing the appeal or applying for the variance shall have the burden of proof by a preponderance of the evidence.
11. The Board shall decide all appeals or applications within thirty-five (35) days of the first meeting or any public hearing, whichever is later. Notice of any decision shall be mailed or hand delivered to the applicant, his representative or agent, the deciding authority, the Planning Board, and the Selectmen within seven (7) days of the actual decision date.
12. The Board shall issue a written decision on all appeals or applications within a reasonable time thereafter. The written decision shall include findings of facts that the Board relied upon to make its decision, as well as the legal conclusions and ordinance interpretations made by the Board upon all the material issues of fact, law or discretion presented and the appropriate order for relief or denial. The written decision shall be promptly delivered to the same parties upon its completion and signing. All written decisions shall become a part of the record.
13. The landowner shall submit to the Department of Environmental Protection a copy of all variances affecting Shoreland Zoning granted by the Board within fourteen (14) days of the written decision. Proof of that submission shall be delivered to the Town by the landowner at the same time. The variance shall not be valid until submitted to the Department.
14. A copy of all variances granted by the Board shall be recorded in the Lincoln County Registry of Deeds by the landowner within ninety (90) days of the written decision. The variance shall not be valid until recorded. Proof of the recording shall be delivered to the Town by the landowner.

E. Reconsideration

A request for reconsideration, with the reasons therefor, may be filed with the Board within ten (10) days of its actual decision. A decision on the request to reconsider shall be completed within thirty (30) days of the date

of the request. If the request is granted, the Board may conduct additional hearings and receive additional evidence and testimony on *de novo* appeal and variance reconsiderations.

F. Appeals to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board may take an appeal to Superior Court in accordance with 30-A M.R.S.A. §2691 (3)(G) and Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision of the Board.

G. Calculating Time

All time limits begin with the actual date of the vote on the decision and not the date of the written decision.

Section 10. Effective Date

The effective date of this Ordinance is May 03, 2018 except that it does not apply to any matters pending on that date as provided in 1 M.R.S.A. §302.