**TOWN OF BREMEN**PO BOX 171, 208 WALDOBORO RD

BREMEN, MAINE 04551

(207) 529-5945 • FAX (207) 529-6302

**ORDINANCE REVIEW COMMITTEE**

**Working Session**

**January 27, 2018**

Committee Members Present:

Wendy Pieh; Walter Voskian; Harold Schramm; Jonathan Hull, Town Attorney.

Committee Members Absent: None

Community Members Present: None

The working session was called to order at 10:30 am.

The Ordinance Review Committee is an ad hoc committee of the Board of Selectmen. It chooses not to operate with an agenda. Wendy Pieh acted as chairman for this meeting. The Ordinance Review Committee member voted that the committee would conduct their working session by reviewing and amending the Appeals Board Ordinance dated 04/16/2004 on a per section basis, meaning that each member would offer their edit(s) for each section to be discussed before continuing to review the onto the next section.

**Section 2. Appointment**

Review of the Board of Appeals Ordinance began with edits on page 1.

E. “Neither a Selectmen, Planning Board member, **nor a Code Enforcement Officer** may serve as a member or alternate member of the Board of Appeals”.

Discussion continued regarding the whether a spouse would be a conflict. It was determined that the situation of a spouse serving on the Board of Appeals would not be a conflict so removing that was advised. The recommendation to add the Code Enforcement Officer as not being able to serve was accepted.

**Section 3. Organization, Rules and Procedures**

A. The Board shall elect a chairperson from among its full voting members…”

The Board of Appeals does not elect a secretary, the Town Clerk serves as the recording secretary.

G. The Chair shall vote on all motions and **a** member may **abstain from voting for a conflict of interest or a prohibited bias with an explanation.**

Member Schramm pointed out that members should have the option of abstaining from voting for reasons other than conflict of interest and prohibited bias. All members were in agreement.

**Section 4. Duties and Powers**

A. The Board of Appeals may adopt rules and procedures for transaction of business and the **Town** shall keep a record of its resolutions, transactions, correspondence, findings and determinations.

D. The Board of Appeals may obtain goods and services necessary to its proper function within the limits of appropriations made for that purpose. **Remove completely from Ordinance.**

**Section 6. Jurisdiction**

A. The Board of Appeals is authorized to hear appeals from the decisions made under **all** Ordinances.

Discussion followed regarding reviewing the list of current Town Ordinances and listing them individually or giving the Board of Appeals authority to hear all appeals. This allows for all ordinances present and future to have right of appeal without having to amend the Board of Appeals Ordinance. Attorney Hull will provide the Ordinance Review Committee with a list of all current Town Ordinances to date at the next meeting.

**Section 7. Types of Appeals**

A.1. Discussion regarding whether all administrative appeals other than Planning Board decisions shall be considered de novo, which means that new information may be presented; if it is not de novo then only information provided for the original decision can be considered. The reasoning for this determination is that various committee decisions do not include a record such as recorded minutes; so there is not the opportunity to review a record prior to the hearing or decision can be considered by the Board of Appeals. The Ordinance Review Committee is in support of this, however because the Planning Board does maintain a record for all decisions, all Planning Board administrative appeal shall will remain not de novo.

Members discussed what the standard of proof should be, and it was determined that the existing description included “…finding that the decision is clearly contrary” is clear with the exception of burden of proof. In order to clarify this issue, the ordinance needs to include the language stating that the burden of proof lies with the appellant.

Attorney Hull voiced a concern with the Board of Appeals authority to “…affirm, modify and/or delete conditions to the decision or permit being reviewed…” as it relates to misinterpretation and/or findings of fact supporting the decision is clearly not supported by substantial evidence in the record. Attorney Hull recommended removing the abovementioned sentence. Ordinance Review Committee members were in agreement with this recommendation. After discussing the issue further, Attorney Hull offered the scenario of the Board of Appeals being able to correct an error without the case going back to the appropriate board/committee. Committee member were not in favor of this practice. The consensus of the Committee was that the appeal should be directed back to the deciding board/committee for resolution.

Lengthy discussion followed for clarification purposes of de novo and how it affects the decision-making board/committee and the need for consistency for all boards/committees appeals.

**A. 2. Administrative Appeal of All Other Decisions**

The Ordinance Review Board determined it would reword this paragraph to include all other Administrative decisions including all committees, boards and Code Enforcement Officer. To hear and decide appeals where it is alleged there is an error in any decision, order, requirement, determination made or refusal to act by all committees, boards or official. Following such a hearing, the Board of Appeals may reverse the decision only upon finding that the decision is clearly contrary to a specific provision of the Ordinance when the provision has been clearly misinterpreted and/or the decision was not supported by substantial evidence. The Board of Appeals 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 **decision**. The Board of Appeals retains the right to accept the appeal or reject the appeal, if the appeal is rejected they can choose to remand.

Discussion regarding if an appeal was to be found valid should the Board of Appeals be allowed the option of either choosing to modify a decision or return the case to the board/committee or official to be reheard. The Board determined that situations could arise that this arrangement would be the best way to handle a decision. All members were in agreement with this proposed change.

**Section 8. Variances**

A. Standard Variances

There was discussion as to whether A.3.a and A.3.d. were necessary as they seem to contradict one another. Attorney Hull clarified for the Board that all criteria must be met in order for a variance to be granted thus there should be no change to the wording of A.3.

**C. Set-back Variance for Single Family Dwellings**

After lengthy discussion regarding various aspects of this section the Board decided to not make any changes at this time. Attorney Hull will check the statutory references and report back to the Board. Options being considered are eliminating this section entirely or reworking to eliminate redundancies and limitations for the purpose of consistency.

**D. Variance from Dimensional Standards.**

After discussion the Board decided to not make any changes to this section at this time. Attorney Hull offered advise that the Board of Appeals should not be making decisions on these types of issues due to the fact the Board of Appeals is not a policy making board its role is more of a check/balance for other decision-making boards and committees.

Member Schramm proposed holding off until Member Robinson was able to be present for further discussion.

**E. Mis located Building Variance.**

After discussion the Board decided to not make any changes to this section. Attorney Hull did acknowledge that there is currently no time limit so that might be an area to review and address for clarification.

**F. Shoreland Zoning Boundary Appeals.**

The Board voted to remove this section entirely.

**Section 9. Appeal Procedure**

**A. Making an Appeal**

A.1. Attorney Hull indicated that the timeline for making an appeal is after the vote not the decision as there may be a delay in when the decision is received by the applicant. So, the following change should be made, such appeals shall be applied for with the payment of $100.00 fee within thirty (30) days of the **vote** appealed from.

A.3. Attorney Hull indicated that it is not a variance appeal, it is actually a variance request so that will be updated.

**B. Hearings**

Attorney Hull will rewrite this section. The Board has decided to not include a time limit for notice of decision to be delivered to appellant. Also, Attorney Hull will confirm that whether or not the Department of Environmental Protection needs to receive a copy of any shoreland zoning variances within fourteen days (14) by the landowner as stated in subsection 12.

**C. Reconsideration**

The Board discussed the need to correct the timeline for reconsideration by the Board of Appeals to say that the reconsideration must occur and be completed within 30 days of the decision which can be up to 60 days from the original decision.

Recorded by:

Cynthia Hasty, Clerk