

# *Town of Scarborough, Maine*

## **Miscellaneous Appeal**

### **INFORMATION REQUIRED FOR ALL APPEALS**

Before any appeal can be processed, the following material must be submitted to the Code Enforcement Office:

1. A fee of \$250.00 payable to the Town of Scarborough.
2. An electronic submission of all application material in pdf format and ten (10) paper copies of all application material. This should include (but not limited to);
  - Completed application form
  - Evidence showing control, right, title or interest in subject property.
  - Current Property Survey
  - Legible BUILDING PLANS that include:
    1. Existing building floor plans with building dimensions.
    2. Proposed buildings or additions with floor plans, building dimensions, external elevation showing views, front, rear, right and left sides; identify area where special exception activity will be conducted.
    3. Any improvements to the property associated with the special exception use.
3. Address **ALL** applicable criteria individually and in writing, as noted on the attached sheets.
4. For appeals from restrictions on non-conforming uses, see attached appeals procedure from Section V.C.5.

The Zoning Board of Appeals meets the second Wednesday of each month at 7:00 P. M. All materials pertaining to the appeal must be submitted to the Code Enforcement Office no later than the 20<sup>th</sup> of the preceding month. If the 20<sup>th</sup> falls on a weekend, all materials are due on the prior Friday.

PLEASE NOTE: Be prepared to answer all questions pertaining to the specific type of appeal requested.

## TYPES OF MISCELLANEOUS APPEALS

Appeals shall lie from the decision of the Code Enforcement Officer to the Board of Appeals and from the Board of Appeals to the Superior Court according to the provisions of Maine Revised Statutes.

To hear and decide only the following Miscellaneous Appeals. Such appeals may be granted only by a majority vote of those members present and voting, and may include such conditions and safeguards as are appropriate under this Ordinance.

- To permit a nonconforming use of land, buildings or structures to be enlarged, extended, expanded, resumed or converted as provided in Section III. F. of this Ordinance (See additional information this type of appeal on page 4 of this document)
  
- To permit the location of off-street parking of passenger vehicles only on lots other than the principal building or use where it cannot reasonably be provided on the same lot. This shall apply only to those lots in Residential Districts which abut Business or Industrial Districts provided that the use shall be accessory to and under control of one or more uses located in and conforming with the uses permitted in the adjacent Business or Industrial District, such control to be evidenced by deed or lease and, if a lease, the period of the parking use shall automatically terminate with the termination of the lease; no such appeal shall be in order for hearing before the Board of Appeals until the Planning Board has reviewed the site plan accompanying the application for building permit or certificate of occupancy for such use and shall have submitted its recommendations with respect thereto, the Board of Appeals may impose such conditions as deemed necessary to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this Ordinance, and may, at its discretion, limit the period of such use.
  
- To permit the location of required off-street parking lots other than the lot containing the principal building or use where it cannot reasonably be provided on the same lot, subject to the conditions in Section XI of the Scarborough Zoning Ordinance.  
To permit additional directional signs as prescribed in Section XII.I.5 of the Zoning Ordinance. The Code Enforcement Officer may permit two directional signs per this Ordinance. No more than two additional signs may be allowed if the Zoning Board rules favorably on an appeal heard pursuant to Section V of the Zoning Ordinance and based upon any of the following criteria:
  - a) a demonstrated need for adequate visibility of the sign to two-directional traffic;

- b) the distance from the nearest State numbered route;
- c) the nature of the business as it relates to public accessibility;
- d) the characteristics of the clientele such as but not limited to familiarity with the area, seasonally attracted, or tourist oriented;
- e) excessive number of turns or confusing route on local roads;
- f) complicated intersections of State numbered routes or major arterials;
- g) a primary consideration shall be to assist customers seeking the specific business location;
- h) the Board shall deny the application for added signs if it finds that their function is one of advertising to attract customers rather than to direct individuals seeking the business;
- i) existing double-faced directional signs which must be replaced shall be considered as two single-faced signs, and the relocation of signs to other locations must be approved by the Zoning Board of Appeals subject to the criteria of this section;
- j) the Zoning Board must specify the approved number(s) and location(s) of additional signs based upon the provisions of this section.

—To permit variances from Flood Plain Management regulations according to the following criteria:

- a) Variances shall not be issued within a regulatory floodway if any increase in flood levels during the base flood discharge would result;
- b) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level in conformance with paragraphs c,d,e and f below:
- c) Variances shall be issued only upon:
  - 1) A showing of good and sufficient cause;
  - 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- d) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- e) The applicant shall be notified in writing by the Zoning Board of Appeals that:
  - (i) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
  - (ii) Such construction below the base flood level increases risks to life and property

- f) A record of all variance actions in designated flood hazard areas, including justification for their issuance shall be maintained by the Zoning Board of Appeals, and all such variances shall be reported in the annual report to the Federal Insurance Administration.

- To determine the exact location of district boundary lines on the face of the earth in cases of uncertainty or dispute as to their exact location

- To grant relief from the restrictions on nonconforming signs contained in Section XII.K of this Ordinance.

### **SECTION III. F- APPEALS FROM RESTRICTIONS ON NONCONFORMING USES**

1. Not with-standing the provisions of Subsection D. and E. of this Section, a nonconforming use of land, buildings or structures may be enlarged, extended, expanded, resumed or converted to another nonconforming use on the lot which it occupied at the effective date of adoption or amendment of the Ordinance, upon approval by the Board of Appeals pursuant to the procedures of Section V. C. of this Ordinance. The Board of Appeals may not approve any such enlargement, extension, expansion or resumption or conversion to another nonconforming use unless it finds that:

- (a) the impact and effects of the enlargement, extension, expansion, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, extension, expansion, resumption or conversion to another nonconforming use; and
- (b) the enlarged, extended, expanded, resumed or conversion to another nonconforming use will comply with the standards for Special Exceptions contained in Section IV. I. of the Scarborough Zoning Ordinance (see below).

### **STANDARDS FOR SPECIAL EXCEPTIONS**

Before it issues a special exception permit, the Board of Appeals shall find, as a matter of fact, that the proposed use meets the following criteria:

- a. The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.
- b. The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

- c. The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree in municipal fire or police protection than existing uses in the neighborhood.
- d. The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.
- e. The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, proximity to other structures and density of development.
- f. If located in a shoreland zone as depicted on the Town of Scarborough Official Shoreland Zoning Map, the proposed use will comply with all of the requirements of the Town of Scarborough Shoreland Zoning Ordinance. (8/5/92)
- g. The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.
- h. The applicant has the technical and financial ability to meet the standards of this Section and to comply with any conditions imposed by the Board of Appeals pursuant to subsection 5 of this Section.
- i. The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

#### **CONDITIONS ON SPECIAL EXCEPTIONS**

Upon consideration of the standards listed in subsection 4 of this Section, the Board of Appeals may attach such condition, in addition to those required by other provisions of this Ordinance, as it finds necessary to insure compliance with those standards and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation, increased setbacks and yards, specified sewage disposal and water supply facilities, landscaping and planting screens, hours of operation, operation controls, professional inspection and maintenance, sureties, location of piers, docks, parking and signs, and types of construction.

#### **SECTION V.C.5. - APPEALS PROCEDURE**

Before making a decision on any Miscellaneous Appeal from restrictions on nonconforming uses, the Zoning Board shall refer said appeal to the Planning Board for an advisory opinion. The Zoning Board shall not act contrary to the Planning Board recommendation unless it makes specific findings of fact to justify its decision. The Planning Board shall consider the criteria of Section III. F. in formulating its recommendation.

## Application for a Miscellaneous Appeal

Appellant Name _____	
Mailing Address: _____	
Phone: _____	E-mail Address: _____
Subject Property: _____	
Nature of Right, title or interest in subject property: _____	
Assessors Map & Lot Number: _____	Zoning District: _____
Is the property located in a Shoreland Zone?    Yes ___    No ___	
Is the property located in a Flood Zone?        Yes ___    No ___	

Name of Representative: _____ (if other than property owner)
Representative Mailing Address: _____
Representative Phone Number: _____
Representative E-Mail Address: _____

A. Describe the type of miscellaneous appeal that is being requested:

In addition and unless waived by the Zoning Administrator, a standard boundary survey of the property must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic peculiarities of the lot in question.

B. Justification of the Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals how the proposed activity meets the standards and conditions required in order to be granted relief from the strict application of the terms of the Scarborough Zoning Ordinance. Please refer to and list the applicable standards and conditions (if any) for the particular type of miscellaneous appeal requested, followed by a narrative explaining how your situation meets each of the criteria. Please type or neatly print your narrative on the following page.

I certify that the information contained in this application and its supplement is true and correct to the best of my knowledge.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_