

## **SECTION V. BOARD OF APPEALS**

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#### **A. APPOINTMENTS AND COMPOSITION.**

There shall be a Board of Appeals of Five Members and Two Associate Members all of whom shall be residents of the Town of Scarborough. The members of the Board shall be appointed by the Legislative Body of the Town of Scarborough. Terms of membership shall be for 3 years except that initial appointments shall be such that the terms of office of no more than two members shall expire in any single year. The associate members shall be appointed for a term of 3 years and shall act on said Board in place of any member who may be unable to act due to interest, absence or physical incapacity. The members shall annually elect one of their number Chairman to preside at all meetings of the Board. The members of the Board shall annually elect a secretary from its own membership who 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. A quorum shall consist of 4 members.

#### **B. POWERS AND DUTIES.**

Appeals shall lie from the decision of the Building Inspector to the Board of Appeals and from the Board of Appeals to the Superior Court according to the provisions of Maine Revised Statutes. The Board of Appeals shall have the following powers and duties:

##### **1. Administrative Appeals.**

To hear and decide where it is alleged there is an error in any order, decision or ruling made by the Building Inspector in the enforcement of this Ordinance. The action of the Building Inspector may be modified or reversed by the Board of Appeals only by majority vote of those members present and voting. In the event of a tie vote, the action of the Building Inspector shall be affirmed.

##### **2. Special Exceptions.**

To hear and decide applications for Special Exceptions permits as provided in Section IV, I of this Ordinance. A Special Exception Permit 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.

##### **3. Variance Appeals.**

To hear and decide appeals requesting such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in undue hardship. A variance may be granted only by majority vote of those members present and voting, and may include such conditions and safeguards as are appropriate under this Ordinance. 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.** That the hardship is not the result of action taken by the applicant or prior owner.

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### 4. Miscellaneous Appeals.

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.

- a)** 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.
- b)** To permit the location of off-street parking of passenger vehicles only on lots other than the principal buildings 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 shall have 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.
- c)** To permit the location of required off-street parking on 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 of Section XI of this Ordinance.
- d)** To permit additional directional signs as prescribed in Section XII of this Ordinance.
- e)** 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 only be issued 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;

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- d. Variance shall only be issued 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 conditions below the base flood level increases risks to life and property; and
- 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.

f) 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.

g) To grant relief from the restrictions on nonconforming signs contained in Section XII(D) of this Ordinance. The Board of Appeals may grant such relief if the Board finds that, because of unusual circumstances of the property on which the nonconforming sign is located, it would not be technically or economically feasible to bring the sign into conformity, and that bringing the sign into conformity would leave the business with no effective way to announce its presence to passing motorists. As used in this paragraph, the term “unusual circumstances” includes, but is not limited to, factors such as the proximity of the sign to the nearest street, any changes in the location of the street right-of-way abutting the property since the original placement of the sign, the size of the property, the shape of the property, the location of the buildings on the property, the number and location of other signs on the property, the location of conforming signs on neighboring properties and the effects of such neighboring signs on the sign in question, the nature of the business located on the property and the need for the business to attract “drive-by” customers. In granting relief under this subsection, the Board of Appeals may impose such conditions as the Board finds necessary and appropriate to achieve the purposes and effectuate the intent of Section XII of this ordinance and may require modifications to the existing nonconforming sign where appropriate to bring such sign into conformity as nearly as possible. [06/01/2005]

### 5. Limited reduction of yard size – residential.

To hear and decide requests for a limited reduction of required yard size for a lot in residential use in order to permit (i) the expansion or enlargement of an existing building or structure, (ii) the construction of a new building or structure which will be accessory to an existing building or structure, (iii) the construction of a new building or structure on a vacant nonconforming lot of record.

A limited reduction of yard size 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. As used in this subsection (5): “limited reduction of yard size” means the reduction of a required front yard by no more than ten feet or the reduction of a required side or

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rear yard by no more than five feet; “lots in residential use” means a lot on which a dwelling exists on July 3, 1991 or a vacant nonconforming lot or record on which a dwelling is proposed.

**a.** The applicant for a limited reduction of yard size must demonstrate the following:

**(1)** The existing buildings or structures on the lot for which the limited reduction of yard size is requested were erected prior to July 3, 1991, or the lot is a vacant nonconforming lot of record;

**(2)** The requested reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district;

**(3)** Due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or new structure in conformance with the currently applicable yard size requirements; and

**(4)** The impacts and effects of the enlargement, expansion or new building or structure on existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirement.

**(5)** The applicant has not commenced construction of the enlargement, expansion, building or structure for which the limited reduction in yard size is requested, so that the Board of Appeals is not considering an after-the-fact application. (12/15/93)

**b.** An application for a limited reduction of yard size shall be accompanied by a standard boundary survey showing all lot lines of the property, the location of each existing building or structure and the location of each proposed expansion, enlargement or new building or structure. The Code Enforcement Officer may waive the requirement of the survey if he determines, in his sole discretion, that the locations of the lot lines relevant to the request for a limited yard size reduction can be determined accurately without a survey.

**c.** Whenever the Board grants a limited reduction of yard size, the Board shall prepare 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, indicating that a limited reduction of yard size has been granted and setting forth the date of the granting. The applicant shall cause the certificate to be recorded in the Cumberland County Registry of Deeds within 90 days of approval of the limited reduction of yard size, or the approval shall be invalid.

**d.** The granting of a limited reduction of yard size pursuant to this subsection V(B)(5) shall not require or be construed as the granting of a variance to relieve hardship. Notwithstanding section V(C)(4), the denial of a variance requested under section V(B)(3) shall not preclude a subsequent application for a limited reduction of yard size under this subsection V(B)(5) and the denial of a request under this subsection V(B)(5) shall not preclude a subsequent application for a variance under subsection V(B)(3). If an application for a variance is pending, the Town shall not accept an application for limited reduction of yard size on the same property; if an application for a limited reduction of yard size is pending, the Town shall not accept an application for a variance on the same property. (7/3/91)

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### 6. Practical Difficulty Variance. [12/01/04]

- a. In addition to the provisions of Section V(B)(1 through 5) of this Ordinance, the board of appeals may grant a variance from the dimensional standards of this ordinance when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:
  1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;
  2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
  3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
  4. No other feasible alternative is available to the applicant, except a variance;
  5. The granting of a variance will result in bringing the applicant's property more nearly into conformance with surrounding properties;
  6. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
  7. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, or flood hazard zone, as defined in the Town of Scarborough Floodplain Management Ordinance.
- b. As used in this section V(B)(6), the following words have the meanings set forth below:
  1. *Dimensional standards*: Those provisions of this ordinance which relate to lot area, lot coverage, frontage, and setback (including buffer) requirements.
  2. *Practical difficulty*: A case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant.

### C. APPEALS PROCEDURE.

1. Before making a decision on any appeal or application, the Board of Appeals shall hold a public hearing, notice of the nature of which shall be published at least ten days in advance of the date of the public hearing, and which shall also be posted in a conspicuous public place in the Town of Scarborough at least ten days in advance of the date of the public hearing. Owners of property abutting or located across a street or way from the property which is the subject of the public hearing shall be mailed copies of the notice of hearing at least 10 days in advance of the hearing date. For the purposes of this subsection, the persons against whom municipal property taxes are assessed shall be considered owners or property. Costs of notice shall be paid by the appellant or applicant. Failure of any property owner to receive notice by mail under this subsection shall not invalidate this action of the Board of Appeals.
2. When an appeal is taken from a decision, ruling, or order of the Building Inspector, the appeal shall be commenced within 30 days of the date of written notification to the applicant of the decision, ruling or order. The appeal shall be filed with the Board of Appeals on forms authorized by the Board, and the appellant shall explicitly set forth the grounds for appeal. The Board shall notify the Building Inspector, as appropriate, of the filing of an appeal.

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**3.** The Building Inspector or his designated assistant shall attend all public hearings and may present to the Board all plans, photographs, or other material he deems appropriate to a property understanding of the appeal or application. Persons wishing to be heard by the Board may appeal in person or through an agent or attorney. The appellant's or applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked only through the chair. All persons at the hearing shall abide by the orders of the Chairman. At the discretion of the Chairman, rebuttal may be permitted by any person present on any testimony presented on the opposing side. Hearing shall not be continued to other times except to consider evidence or to obtain additional evidence which cannot be produced at the scheduled hearing and only after a vote of the majority of the members present and voting to continue the hearing.

**4.** If the Board of Appeals shall deny an appeal or application, a second appeal or application of a similar nature for the same property may not be brought before the Board within one year of the date of denial of the first appeal or application, unless, in the opinion of the majority of the Board, substantial new evidence can be brought before the Board, or unless the Board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of fact has been made.

**5.** 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.