

## **ARTICLE 4: ZONING BOARD OF APPEALS, VARIANCES, AND APPEALS**

### **SECTION 4.01 COMPOSITION**

After the effective date of this Code, the Zoning Board of Appeals (ZBA) will consist of 7 members. Those persons who are members and associate members as of the date of adoption of this Code continue as members of the ZBA until their terms of office expire and they are replaced. This does not constitute a reestablishment of the ZBA.

### **SECTION 4.02 APPOINTMENTS**

The members of the ZBA are appointed by the City Council.

### **SECTION 4.03 QUALIFICATIONS**

All members of the ZBA must be residents of the City of Bath and must be registered voters. A City Council member, a Planning Board member, or the spouse of a City Council member or Planning Board member may not be a member of the ZBA.

### **SECTION 4.04 TERMS OF OFFICE**

Members of the ZBA serve staggered 3-year terms. If a vacancy occurs, the term of the person appointed to fill the vacancy is for the period of the unexpired term. The terms of members expire on September 1 unless a replacement has not been appointed, in which case the term of the expiring member is extended until a replacement is named.

### **SECTION 4.05 DISMISSAL OF MEMBERS**

A member of the ZBA may be dismissed for cause by the City Council. When considering removal, the member must be notified of the cause and the time and place of the City Council meeting at least 7 days prior to the meeting at which the removal is to be considered. At that meeting, the member has a right to be heard concerning the removal. Any member who does not attend 50 percent of the ZBA meetings in any 6-month period, unless otherwise excused by the Chair of the ZBA, may be removed by the City Council without notice.

## **SECTION 4.06 OFFICERS**

- A. The ZBA must annually elect a Chair, a Vice Chair, and other officers as it chooses from its membership. These officers are elected by the ZBA during its first meeting in September, provided the City Council has made its new appointments by that date. The term of office for officers is 1 year; officers may succeed themselves if so elected.
- B. The Chair is responsible for calling meetings of the ZBA, establishing agendas for the meetings, presiding at meetings, and representing the ZBA before the City Council or Planning Board.
- C. The Vice Chair is responsible for carrying out the duties of the Chair in his/her absence or incapacity.

## **SECTION 4.07 MEETINGS OF THE BOARD**

The ZBA will meet on the first Monday of each month unless that day falls on a legal holiday, in which case the meeting will be held on the following Monday. The Chair also may call other meetings as necessary, and must call a meeting upon the written request of any 3 members of the ZBA.

All meetings of the ZBA must be announced to the public at least 72 hours prior to the start of the meeting by either posting, advertising, or mailing notices. All meetings are open to the public and will be conducted in accordance with such rules of procedure as the ZBA may determine, as well as applicable state and local laws. A notice of the ZBA agenda must be published in a newspaper with local circulation at least 72 hours prior to any meeting.

## **SECTION 4.08 QUORUM**

A quorum consists of 4 members of the ZBA. No business may be conducted without a quorum; however, fewer than a quorum may decide to postpone the meeting to another date.

## **SECTION 4.09 CONFLICT OF INTEREST**

A member of the ZBA may not vote on or participate in any matter in which he/she has a direct or indirect financial or personal interest. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon will be decided by a majority vote of the members present and voting, except the member who is being challenged. A member of the ZBA may not represent any third party in matters coming before the ZBA.

## **SECTION 4.10 VOTING**

All members present and not excused must vote on each item. The votes of a majority of those members present and voting are required for the passage of any item of ZBA business.

## **SECTION 4.11 POWERS AND DUTIES**

The ZBA has the following powers and duties:

### **A. Administrative Appeals**

The ZBA will hear and decide appeals where it has been alleged that there is an error in any interpretation or determination made by the CEO in the administration of this Code on a pending application. In acting on administrative appeals, the ZBA may sustain the action of the CEO or it may modify or reverse his/her action if the ZBA decides that the CEO erred. Enforcement decisions of the CEO may not be appealed to the ZBA. All other appeals from actions or failure to act by the CEO are to the Superior Court. [amended May 16, 2001]

### **B. Variance Appeals**

The ZBA will hear and decide requests for a variance from the strict enforcement of the provisions of this Code in accordance with Section 4.12 of this Code and, as applicable, with the Flood Damage Prevention Ordinance.

### **C. Miscellaneous Appeals**

The ZBA will hear and decide such other matters as are permitted under the Code, including sign provisions, the building code, and City Manager's decisions under Section 3.08. The procedures in Section 4.13, A-G, are to be used when administering miscellaneous appeals to the ZBA. Enforcement decisions of the CEO may not be appealed to the ZBA. [amended May 16, 2001]

### **D. Establish Rules of Procedure**

The ZBA may establish Rules of Procedure that will govern the conduct of meetings and other business.

## **SECTION 4.12 VARIANCES**

### **A. Variance Defined**

A variance is a relaxation of the terms of this Code where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Code will result in unnecessary or undue hardship.

### **B. Items for Which a Variance May be Granted**

As used in this Code, a variance is authorized only for the following items:

1. minimum lot area (may not be varied below the minimum lot area per unit for residential uses)
2. lot width
3. building height
4. lot coverage
5. setbacks (may not be varied below Yard Area requirements)
6. sign requirements
7. flood-damage-prevention requirements of the Flood Damage Prevention Ordinance

### **C. Items for Which a Variance May Not be Granted**

Establishment of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconformities in the particular zone or adjoining zone.

### **D. Application for a Variance**

Application for a variance is made to the CEO on forms provided for that purpose. The application must be accompanied by a filing fee, as set by resolution of the City Council, to cover costs of advertising and notification. An application will not be processed unless the filing fee is paid. The application must clearly identify the location of the property, the relief sought, and the reason for requesting the variance.

## **E. Procedure**

Upon receipt of an application for variance, the CEO must place it on an agenda of the ZBA meeting to be held within 30 days of receipt of the application. The time, date, and place of the public hearing must be advertised in a newspaper with general circulation in Bath at least 7 days prior to the public hearing.

The CEO also must notify in writing by regular mail any abutting property owners of the time, date, and place of the public hearing.

The ZBA must act on the application within 30 days of the conclusion of the date of the public hearing. The ZBA must keep a written record of each case.

The applicant must be notified in writing of the action of the ZBA together with the reasons for any denial. If the application is approved subject to conditions, any violation of those conditions revokes the approval of the ZBA.

## **F. Standards for Granting a Variance**

Prior to voting to grant a variance, the ZBA must review the application and offer specific findings that the following standards have been met:

1. That the requirements of this Code will impose an undue hardship on the property owner, which means:
  - (a) the land in question cannot yield a reasonable return unless a variance is granted
  - (b) the need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood
  - (c) the granting of the variance will not alter the essential character of the locality
  - (d) the hardship is not the result of action taken by the applicant or a prior owner
2. A variance may not be granted solely on economic considerations.

## **G. Conditions of Approval**

The ZBA is empowered to impose conditions on the property owner if it finds that such conditions are necessary to protect abutting property owners or the community as a whole from adverse impacts resulting from the granting of a variance.

## **H. Set-back Variance for Single-family Dwellings**

1. The ZBA may, in accordance with 30-A M.R.S.A. Section 4353 (4-B), grant a variance to the set-back requirement of the space and bulk regulations provided all of the following criteria are met:
  - (a) The single-family dwelling is the primary year-round residence of the person seeking the variance.
  - (b) The granting of the variance will not cause the area of the dwelling to exceed the maximum permissible lot coverage according to the space and bulk regulations.
  - (c) The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
  - (d) The granting of a variance will not alter the essential character of the locality.
  - (e) The hardship is not the result of action taken by the applicant or a prior owner.
  - (f) The granting of the variance will not substantially reduce or impair the use of abutting property.
  - (g) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
2. A variance granted under this sub-section may not exceed 20% of the set-back requirement.

## **I. Limits on Variances**

A variance granted by the ZBA expires if the work or change involved has not commenced within 6 months of the date on which the variance was granted or if the work or change has not been substantially completed within 1 year of the date of approval, unless otherwise extended by the ZBA.

## **J. Reapplication**

If the ZBA denies a variance, a second request of a similar nature cannot be brought before the ZBA within 1 year of the date of the first request unless, in the opinion of the majority of the ZBA, substantial new evidence can be brought forward or unless the ZBA finds, in its sole and exclusive judgment, that an error of law or misunderstanding of facts has been made.

## **K. Misrepresentation**

The ZBA retains the right to rescind any approval of a variance if further information or additional investigation reveals a misrepresentation of the information presented to the ZBA.

## **L. Prior Work**

Any construction activity commenced prior to the granting of a required variance is a violation of this Code.

### **SECTION 4.13 APPEALS PROCEDURE** [Section title amended May 16, 2001]

- A. Any person aggrieved by any interpretation or determination made by the CEO in the administration of this Code by the granting or denying of an application may appeal same to the ZBA. An aggrieved person is defined as the person making the original application for determination or any abutter to the property forming the basis for the application. The standard of review applied by the ZBA is whether the action appealed conforms to the specific provisions and intent of this Code.
- B. Based on that review, the ZBA may sustain, modify, or reverse the action of the CEO.
- C. An administrative appeal must be filed with the CEO within 30 days of the CEO's action. The appeal must state the CEO's action and the reason the applicant believes it is in error.
- D. The appeal must be placed on the ZBA's agenda for public hearing within 30 days of receipt. The time, date, and place of the public hearing must be advertised in a newspaper with general circulation in Bath at least 7 days prior to the public hearing. The CEO also must send a notice by regular mail at least 7 days prior to the date of the hearing to any abutting property owners notifying them of the time, date, and place of the public hearing. [amended May 16, 2001]
- E. At any hearing, the appellant has the right to be present, to be represented, and to present all relevant information to the ZBA. The ZBA must rule on the appeal within 30 days of the date of the public hearing, unless this period is waived by the appellant.
- F. The ZBA must keep a written record of each case. [added May 16, 2001]
- G. The appellant must be notified in writing of the action of the ZBA together with the reasons for any denial. If the application is approved subject to conditions, any violation of those conditions revokes the approval of the ZBA. [added May 16, 2001]

## **SECTION 4.14 PROCEDURES WHEN PROPERTY IS IN THE SHORELAND ZONE**

[added October 28, 2009]

### **A. Variance Appeal**

A copy of each variance request, including the application and all supporting information supplied by the applicant, must be forwarded by the CEO to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the ZBA. Any comments received from the Commissioner prior to the action by the ZBA must be made part of the record and must be taken into consideration by the ZBA.

### **B. Administrative Appeals**

When the ZBA reviews a decision of the CEO the ZBA must hold a “de novo” hearing. At this time the ZBA may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the ZBA must hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

### **C. Findings of Fact and Notices Given**

The ZBA must state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the ZBA. The ZBA must cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within 7 days of the ZBA's decision. Copies of written decisions of the ZBA must be given to the Planning Board, CEO, the City Manager, and the City Council.

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