

BOARD OF APPEALS

Section 1. ESTABLISHMENT and ORGANIZATION

Reestablishment: Pursuant to 30A, M.R.S.A. § 2691 and 3001, The present Zoning Board of Appeals for the town of Baileyville as now constituted, is hereby reestablished and shall constitute the Board of Appeals under this ordinance, and each member thereof shall serve the remainder of his or her present term.

- A. There shall be a Board of Appeals consisting of five (5) members and three (3) alternate members, all shall be residents of the town and appointed by the municipal officials as provided in Title 30A, M.R.S.A. §2691, as amended . The Board shall elect annually a chairman and a secretary from its membership. The members shall serve for terms of 3 years. Terms shall be staggered. Members shall continue in office until their successors are appointed. Alternate members shall act on the Board in place of any member who may be unable to act due to a personal involvement, absence from the meeting or physical incapacity.
- B. No municipal official, town employee or a spouse of a municipal official may be a member or an alternate member of the Board.
- C. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, excluding the member who is being challenged.
- D. A member of the Board may be dismissed for cause, after notice and hearing by the municipal officers before the expiration of such member's term.
- E. The Chairman shall designate which alternate member shall serve in the stead of the absent or disqualified member.
- F. Vacancies shall be filled within sixty (60) days by appointment of the municipal officers for the unexpired term.

Section 2. PROCEDURE

- A. The Board of Appeals shall adopt rules necessary to the conduct of it's affairs provided that any rule may be waived by the Chairman upon good cause shown and in keeping with this Ordinance and the Ordinances to which this Board is the appellate body. The Chairman, or in his absence the acting Chairman, may call meetings of the Board and administer oaths as required. The Chairman or acting Chairman shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers.

As amended by vote of Town Meeting of May 13, 2013

A quorum of the Board necessary to conduct an official Board meeting shall consist of at least 3 members. The Chairman shall preside at all meetings of the Board and be the official spokesman for the Board. All meetings of the Board are open to the public.

- B. The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the Secretary shall be on file in the municipal clerks office and shall be open to public inspection during regular office hours.

Section 3. APPEALS TO THE BOARD OF APPEALS

- A. The Board may exercise jurisdiction only upon receipt of a written appeal from a person aggrieved, filed within 30 days after action complained of, or for property tax abatement appeals within 60 days after action complained of, stating the relief sought and the grounds thereof.
- B. The Board of Appeals shall hear an appeal within 30 days from the date of receiving a written notice of request from an aggrieved party. Public notice thereof shall be posted in conspicuous places in the Town 7 days prior to the date of the meeting, as well as due notice to the parties in interest. Any party may appear at the hearing in person or by authorized representative, agent or attorney.
- C. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of the irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present it's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- D. The Board shall not accept or consider any oral or documentary evidence as testimony, which is submitted subsequent to the close of a hearing unless provisions for such submission are made prior to said closing.

Section 4. APPEALS TO SUPERIOR COURT

Any person aggrieved by a decision of the Board may appeal within 45 days of the vote on the original decision, to Superior Court from any order, relief, or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B, except as otherwise provided by statute.

Section 5. STAY OF PROCEEDINGS

An appeal stays all legal proceedings in furtherance of the action appealed unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal shall have been

filed, that by reason of facts stated in the certificate to stay would, in the officer's opinion cause imminent peril to life and property. In such cases, proceedings shall not be stayed other than by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause is shown.

Section 6. JURISDICTION, POWERS AND DUTIES

The Board of Appeals is authorized to hear and decide appeals from decisions, actions or failure to act by the following officials and in the following matters:

- a. By the Code Enforcement Officer or Planning Board, in the administration of the Shoreland Zoning Ordinance;
- b. By the Planning Board in the administration of the Subdivision Ordinance or Regulations and 30-A M.R.S.A. Section 4401-4407 - subdivisions;
- c. By the Code Enforcement Officer or Planning Board, in the administration of the Floodplain Ordinance;
- d. By the Code Enforcement Officer or Planning Board, in the administration of the Zoning or Land Use Ordinance;
- e. By the municipal officers in the administration of property tax abatements under 36 M.R.S.A. § 841.

All appeals and variance requests shall be in accordance with the applicable provisions of the subject code or ordinance, including any provisions thereof specifying the jurisdiction of the Board.

The Board of Appeals' authority does not include appeals from enforcement decisions made by the Code Enforcement Officer, Building Inspector, or other enforcement official. The term *enforcement decisions* refers to violation determinations and enforcement actions taken by the enforcement official. The Board shall have no authority to act in any other matter except as expressly provided by ordinance or statute.

The Board will have the power to hear and decide administrative appeals on an appellate basis, where it is alleged by an aggrieved party that there is an error in an order, requirement, decision or determination made by, or failure to act by, the Planning Board relative to a subdivision application; and to hear and decide administrative appeals, on a de novo basis, where it is alleged that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of action on a permit application under the ordinance.

When acting in an appellate capacity the Board of Appeals may reverse the decision of the Planning Board only upon a finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may

remand the matter to the Planning Board for further consideration. When acting in a de novo capacity, the Board of Appeals shall hear and decide that matter afresh, undertaking its own independent analysis of the evidence and the law, and reaching its own decision. For all matters before the Board of Appeals, the person filing the appeal or request shall have the burden of proof.

The Secretary of the Board shall submit to the Code Enforcement Officer a report of all variance actions, including justification for granting of a variance and an authorization for the Code Enforcement Officer to issue a development permit, which includes any conditions to be attached to the permit.

The Board shall authorize upon appeal in specific cases such variances from the terms of the Zoning or Land Use Ordinance as will not be contrary to the public interest, where, owing to special conditions a literal enforcement would result in undue hardship. The term "undue hardship" shall mean:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood;
3. That granting the variance will not alter the essential character of the neighborhood;
4. That the hardship is not the result of action taken by the applicant or a prior owner.

The Board of Appeals, based on clear and convincing evidence presented to it, makes a finding that the proposed use would meet the provisions of State statute. To receive a variance, the applicant must meet all 4 criteria listed above and the Board may prescribe appropriate conditions or safe-guards to be met by the developer to ensure public/private safety and health; and shall be incorporated in the terms under which the variance is granted. Violations of these conditions shall constitute a violation of this Zoning or Land Use Ordinance.

Site Inspections

The Board may make site inspections as deemed necessary, together with the municipal officials and the petitioner, at a reasonable time as mutually agreed upon, in order to document the facts for the above finding.

Any and all site inspections and findings shall be recorded and made part of the permanent record.

Section 7. DECISIONS

- A. The concurring vote of 3 members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Planning Board or Code Enforcement Officer, or to decide in favor of the applicant in any matter on which it is required to pass under this Ordinance, or to affect any variation of this Ordinance.
- B. The transcript of testimony (if any), and exhibits, together with all papers and requests filed in the proceedings shall constitute the record.
 - 1. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the basis therefor, upon all material issues of the fact, law, or discretion presented and the appropriate order, relief, or denial thereof.
 - 2. All decisions of the Board shall be made within 30 days from the date an appeals hearing is held, or within 10 days for a property tax abatement appeal.
 - 3. Notice of any decision shall be mailed or hand delivered to the petitioner, his authorized representative or agent, the applicable municipal official, and the Town Council within 7 days of the Board's decision.

The board may reconsider any decision reached under this section within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

Notwithstanding Section 4 of this Ordinance, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

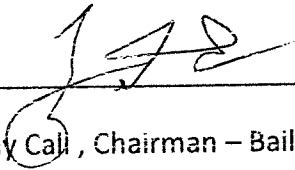
Section 8. REPEAL OF PRIOR ORDINANCES; RATIFICATION OR PRIOR BOARD ACTIONS

Any ordinance enacted or legislative act prior hereto and establishing or purporting to establish a board of appeals by that or another name, or governing or purporting to govern its membership, authority or procedure, is hereby repealed, it being the intent of this ordinance to abolish and replace any such board with a board of appeals lawfully established and authorized, among other things, to hear zoning appeals pursuant to 30-A M.R.S.A. § 2526 (6). Any act prior hereto of that board commonly known as the board of appeals and abolished hereby is hereby ratified and confirmed.

Section 9. SEVERABILITY

The invalidity of any section or provision of this ordinance shall not be held to invalidate any other section or provision, which shall remain in full force and effect.

Date Passed: May 13 2013

Attest True Copy: 
Timothy Call, Chairman – Baileyville, Town Council

As amended by vote of Town Meeting of May 13, 2013