

**Town of Corinth
Appeals Board Ordinance
March 17, 2009**

I. General

1.1 TITLE

This Ordinance shall be known as and may be cited as the "Appeals Board Ordinance of the Town of Corinth, Maine ", and will be referred to herein as the "Ordinance".

1.2 AUTHORITY

This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII, Part Second of the Maine Constitution, Title 30-A, Section 4353 and 2691 and Title 38, Section 435 et. seq., of the Maine Revised Statutes Annotated.

1.3 ESTABLISHMENT

There shall be an Appeals Board of five (5) members and two (2) associate members appointed by the Board of Selectpersons as provided in Title 30-A, MRSA, Section 4353 and 2691

1.4 TERMS

1.4.1 Regular Members

The terms of the regular members shall be for five (5) years and be such that the term of at least one (1) member will expire each year.

1.4.2 Associate Members

The term of the associate members shall be five (5) years. The associate members may act on the Board in place of any member who may be absent. The associate members may also act in place of any member who is unable to vote due to conflict of interest or any other reason if the vote of the regular member would cause the number of members present and voting to be fewer than three (3). Participating associate members shall be selected to vote on an alternating basis. Any dispute as to right to serve shall be resolved by the Chairperson.

1.4.3 Proceedings

The Board shall keep minutes of its proceedings, recording the vote of each member on all matters coming before that Board. The minutes of that Board and all correspondence shall be a public record. Three (3) members of that Board shall constitute a quorum for conducting a meeting and taking action and the concurring vote of at least three (3) members is necessary to grant any variance request or reverse any action of the Code Enforcement Officer. A tie vote shall be considered a rejection of the application or appeal. The Board is governed by the procedures set forth at Title 30-A, MRSA, Section 4353 and 2691 and in this Ordinance. In addition, the Board may adopt any procedural rules not in conflict with that Title or this Ordinance, which it deems necessary or proper for the conduct of its business.

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2. OFFICERS AND DUTIES

2.1 The officers of the Board shall consist of a Chairperson, Vice Chairperson and Secretary who shall be elected annually by a majority of all Board members.

2.2 Chairperson

The chairperson shall perform all duties required by law and herein and shall preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order and procedure, and shall take other such actions as are necessary for the efficient and orderly conduct of hearings unless directed otherwise by a majority of the Board.

2.3 Vice Chairperson

The Vice Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability or disqualification.

2.4 Secretary

The Secretary, subject to the direction of the Board and Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or abstaining from vote, indicating such fact. The Secretary shall also arrange proper and legal notice of hearings, attend to correspondence of the Board and to other duties as are normally carried out by a secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and shall prepare a complete record of each hearing, including: date(s), time(s), place(s) of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusions; the decision of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times. The Town of Corinth Committee Policy shall be followed

3. CONFLICT OF INTEREST

3.1 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, except that the member with the potential conflict shall abstain from voting.

3.2 "Conflict of interest" shall be construed to mean any direct or indirect pecuniary interest or benefit, any familial relationship within the sixth degree of consanguinity, and any other situation where bias, lack of independence, or the appearance of lack of independence is present. It shall be the responsibility of the member with the potential conflict of interest to demonstrate to the satisfaction of the other members of the Board that he/she is free of such potential conflict and is capable of performing his/her duties with full objectivity.

3.3 Selectpersons, Planning Board members, Zoning Board members, code enforcement officers, town employees, town agents and spouses of any of the foregoing are considered to have a conflict of duties and shall not serve on the Appeals Board.

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4. POWERS AND DUTIES

4.1 ADMINISTRATIVE APPEALS

The Board shall have the power to hear and decide appeals where it is alleged that there is an error in any order, requirements, decision, or determination made by, or failure to act by the Code Enforcement Officer in the administration of this Ordinance. When errors of administrative procedures or interpretation are found, the case shall be remanded back to the Zoning Board, Subdivision Planning Board or Code Enforcement Officer for correction.

4.2 VARIANCE APPEALS

The Board shall have the power to authorize variances upon written appeal within the limitations set forth in this Ordinance.

4.2.1 Dimensional variances may be granted only from dimensional requirements including: frontage (including shore frontage), lot area, lot width, height, percent of lot coverage, and setback requirements.

4.2.2 Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

4.2.3 The Board shall not grant a variance unless it finds that the strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean all of the following:

4.2.3.1 The land in question cannot yield a reasonable return unless a variance is granted;

4.2.3.2 That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

4.2.3.3 That the granting of a variance will not alter the essential character of the locality; and

4.2.3.4 That the hardship is not the result of action taken by the applicant or a prior owner.

4.2.4 The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this Section solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes this Sub-Section, a disability has the same meaning as a physical or mental handicap under Title 5, MRSA, Section 4553.

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- 4.2.5 The Board shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- 4.2.6 A copy of all variances granted by the Appeals Board shall be submitted to the Department of Environmental Protection, within fourteen (14) days of the decision, where such variances applies to structures or land within the Shoreland Area.
- 4.2.7 The Board may interpret the provisions of any applicable Town ordinance(s) which are called into question.
- 4.2.8 The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable Town ordinance.

4.3 GENERAL APPEALS

The Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit, variance or other required approval, or any application therefore, including the grant, conditional grant, denial suspension, or revocation of any such license, permit, variance or other approval (hereinafter a "Decision"):

- 4.3.1 Rendered by the Code Enforcement Officer or Planning Board pursuant to the Shoreland Zoning Ordinance;
- 4.3.2 Rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to any statute or Town ordinance;
- 4.3.3 Rendered by the Selectpersons or Assessors' agent pursuant to the abatement of taxes;
- 4.3.4 Rendered by the Selectpersons or Road Commissioners pursuant to the Town Road Ordinance;
- 4.3.5 Rendered by the Planning Board or Code Enforcement Officer pursuant to the Flood Hazard/Floodplain Management Ordinance;
- 4.3.6 Rendered by the Zoning Board pursuant to the Zoning and Land Use Ordinance.

5. APPEAL PROCEDURE

5.1 TIME LIMIT

An administrative or variance appeal may be taken to the Board by an aggrieved party from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

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5.2 WRITTEN NOTICE

Such appeal shall be made by filing with the Board a written notice of appeal which includes:

5.2.1 A concise written statement indicating what relief is requested and why it should be granted; and

5.2.2 A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief requested.

5.2.3 A completed application for the type of appeal that has been requested. A complete application has no unanswered questions.

5.2.4 Items 5.2.1, 5.2.2 and 5.2.3 need to be delivered to the Code Enforcement Officer at least (7) seven days prior to the scheduled hearing date. Failure to comply may result in a delay and or denial of your appeal

5.3 RECORD OF CASE

Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board all of the papers constituting the record of the decision or action being appealed.

5.4 PUBLIC HEARING

The Board shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of any appeal request.

5.4.1 The Town of Corinth Board of Appeals shall be responsible for notification of the date, time, and place of the hearing by placement in newspapers of general circulation in the area and notifying abutters at least 7 days prior to the hearing. The cost, with a minimum of \$50.00 paid in advance, shall be born as follows:

5.4.2 If the appeal is made by an abutter of the project under review, or any other member of the public, Cost of the publication of the notice_and the cost of notifying any abutters by 1st class mail_shall be borne by the person(s) making the appeal

5.4.3 If the appeal is made by the applicant of the project under review, that applicant shall bear the cost of publication of the notice_and the cost of notifying any abutters by 1st class mail.

5.5 HEARINGS

5.5.1 The Board may receive any oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her 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.

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5.5.2 The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

5.5.3 At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

5.5.4 The Code Enforcement Officer or representative of the Planning Board or Zoning Board shall attend all hearings and may present to the Appeals Board all plans, photographs, or other material he deems appropriate for an understanding of the appeal.

The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

5.6 DECISION BY BOARD

5.6.1 QUORUM

A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.

5.6.2 BURDEN OF PROOF

The person filing the appeal shall have the burden of proof.

5.6.3 ACTION ON APPEAL

Following the public hearing on an appeal, the Board may reverse the decision, or failure to act, of the Code Enforcement Officer only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.

5.6.4 TIME FRAME

The Board shall decide all appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision within seven (7) days of the Board's decision.

Board decisions shall only be made by voting at a public meeting. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, and the appropriate order, relief or denial thereof.

5.7 RECONSIDERATION

The Board may reconsider any decision reached within forty-five (45)¹ days of its prior decision. A request to the board to reconsider a decision must be filed within (10) ten 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

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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 ordinance and in Title 30-A section 2691.

The Board may not entertain a second application for a variance concerning the same property after a previous application has been denied unless a substantial change of conditions has occurred or considerations materially affecting the merits of the subject matter had intervened between the first application for appeal and the subsequent application.

6. APPEALS TO SUPERIOR COURT

An appeal may be taken by any aggrieved party to Superior Court in accordance with State laws within forty-five (45)¹ days from the date of any decision of the Board.

7. EFFECTIVE DATE

The effective date of this Ordinance and any subsequent amendments shall be the date of adoption at a Town Meeting. A copy of this Ordinance, certified by the Town Clerk, shall be on file at the Town Office.

8. REPEAL OF PRIOR ORDINANCE

The existing Appeals Board Ordinance and any other existing Town ordinance or policy addressing appeals are repealed as of the effective date of this Ordinance. However, the adoption of this Ordinance shall not affect nor prevent any pending or future prosecution of, or action to abate, the violation of any ordinances repealed by this Section if the violation is also a violation of the provisions of this Ordinance.

It is also the intention and direction of this Section that if this Ordinance is, for any reason, held to be invalid or void in its entirety, the ordinances repealed by this Section shall be automatically revived.

9. CHANGE CONTROL

03/17/09	Ordinance adopted at Annual Town Meeting March 17, 2009 via passage of Article 65.
¹ 03/17/09	Corrected per discussion at Annual Town Meeting to conform to State law
07/21/09	Amended at a special town Meeting
03/20/12	Ordinance amended at Annual Town Meeting March 20, 2012 via passage of Art. 59