

Town of Alfred Code: Zoning, Chapter 160

ARTICLE XX Board of Appeals (§ 160-157 — § 160-164)

§ 160-157 Establishment and organization.

A.

A Board of Appeals is hereby established in accordance with the provisions of 30-A M.R.S.A. § 2691. It consists of not more than seven members. Members of the Board of Appeals are appointed by the municipal officers. A municipal officer or municipal officer's spouse may not be a member of the Board of Appeals.

[Amended 3-28-2009 ATM by Art. 21]

B.

The term of office of a member is three years serving staggered terms. Initial terms are two members appointed for one year, two for two years, and three for three years.

C.

When there is a permanent vacancy, the municipal officers must appoint a new member to serve for the remainder of the unexpired term.

D.

Members of the Board of Appeals must be legal residents of Alfred when appointed and serving.

E.

Members of the Board of Appeals may be removed from office by the municipal officers for cause upon written charges and after public hearing. "For cause" includes failure of a Board member to attend three consecutive meetings without the recorded consent of the Chair.

F.

The Board of Appeals must annually elect a Chair, Vice Chair, and Secretary from its own membership. No member may hold two Board of Appeals offices simultaneously.

G.

Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting must be decided by a majority of the members, except the member who is being challenged.

§ 160-158 Proceedings of the Board of Appeals.

A.

A quorum necessary to conduct business of the Board of Appeals is four members.

B.

The Board of Appeals must adopt rules necessary to the conduct of its affairs, in keeping with the provisions of this chapter and 30-A M.R.S.A. § 2691.

C.

Meetings are held at the call of the Chair and at such other times as the Board of Appeals may determine. All meetings are open to the public.

D.

The Board of Appeals must keep minutes of its proceedings, showing the vote of each member upon each question, or of absence or failure to vote, and must keep records of its examinations and other official actions, all of which are a public record and must be filed with the Town Clerk.

§ 160-159 Powers and duties of the Board of Appeals.

The Board of Appeals has the following powers and duties:

A.

Administrative appeal of the CEO. To hear and decide administrative appeals, on a de novo basis, where it is alleged by an aggrieved party that there is an error in any written order, requirement, decision, or determination made by, or failure to act by, the CEO in the review of and action on a permit application

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under this chapter. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

[Amended 3-28-2009 ATM by Art. 21]

B.

Administrative appeal of the Planning Board. To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in its administration of this chapter.

[Amended 3-28-2009 ATM by Art. 21]

C.

Variations. To authorize variances when specifically applied for, but only within the limitations set forth in this chapter.

§ 160-160 Variances.

[Amended 3-8-2003 ATM by Art. 26; 3-8-2008 ATM by Art. 26]

A.

Standards applicable to all variances. Any of the following types of variances may be granted only under the following conditions:

[Amended 3-28-2009 ATM by Art. 21]

(1)

Variances may be granted only from dimensional requirements, including but not limited to lot size, lot frontage, structure height, lot coverage, and setback requirements, subject to the specific limitations and restrictions found below in this section.

(2)

The Board shall not grant a variance unless it finds that the proposed structure or use would meet the provisions of this chapter except for the specific provision which has created the nonconformity and from which relief is sought.

(3)

Establishment or expansion of nonconforming uses otherwise prohibited are not allowed by variance.

(4)

A variance may not be granted simply because of the presence of nonconformities in the district or uses in adjoining districts.

(5)

The variance granted shall only be the minimum variance that will make possible the reasonable use of the land or structure in order to preserve the terms of this chapter as much as possible, and the Board of Appeals may impose such conditions to a variance as it deems necessary, to this end. The party receiving the variance and any subsequent owner of the property shall comply with any conditions imposed.

(6)

The Board of Appeals may grant a variance only by the concurring vote of at least four members.

B.

Types of variances allowable and standards for each. The Board of Appeals may only grant three types of variances, as set forth below:

(1)

Relaxed setback variances only for single-family dwellings outside of shoreland areas. The Board may grant a variance from a setback requirement for a single-family dwelling only when strict application of the Zoning Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

(a)

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

(b)

The granting of a variance will not alter the essential character of the locality;

(c)

The hardship is not the result of action taken by the applicant or a prior owner;

(d)

The granting of the variance will not substantially reduce or impair the use of abutting property; and

(e)

That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

The use of the above relaxed setback variance standards is strictly limited to permitting a variance from a setback requirement for a single-family dwelling that is the primary year-round residence of the petitioner.

A variance under this subsection shall not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

A variance under this subsection may only exceed 20% of a setback requirement, if the petitioner has obtained the written consent of an affected abutting landowner.

Under this subsection, variances of setbacks from water bodies in Shoreland Areas as described in Title 38, M.R.S.A. § 435 shall be prohibited. Variances of setbacks from water bodies in Shoreland Areas shall meet the criteria of Subsection **B(3)** below.

(2)

Relaxed dimensional standards variance, available to other uses than single-family outside of shoreland areas. The Board may grant a variance from the dimensional standards of the Zoning Ordinance to any uses other than single-family dwellings when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

(a)

The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;

(b)

The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

(c)

The practical difficulty is not the result of action taken by the petitioner or a prior owner;

(d)

No other feasible alternative to a variance is available to the petitioner;

(e)

The granting of a variance will not unreasonably adversely affect the natural environment; and

(f)

The property is not located in whole or in part within shoreland areas as described in Title 38, M.R.S.A. section 435.

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As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

(3)

Dimensional variances allowable within shoreland areas. Within shoreland areas as described in Title 38, M.R.S.A. § 435, the Board of Appeals may grant a variance only if it finds that the strict application of the terms of this ordinance would result in undue hardship. The term "undue hardship" shall mean:

[Amended 3-28-2009 ATM by Art. 21]

(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 a prior owner,

C.

Approval of a cluster development is not a variance. The approval of the Planning Board of a cluster development, pursuant to § [160-123](#) of the Alfred Town Code, shall not be considered the granting of a variance. In a cluster development, the Planning Board is not authorized to reduce the dimensional standards required under the mandatory shoreland zoning laws, Title 38, Chapter 3, Subchapter 1, Article 2-B.

Editor's Note: See 38 M.R.S.A. §§ 435 through 449.

D.

Variances are not required for the placement of equipment or structures necessary for the sole purpose of making a dwelling accessible to a person with a disability, as defined by this chapter. Such equipment or structures are excluded from the definition of a structure; see Article [II](#), definition of "structure."

[Added 3-28-2009 ATM by Art. 21]

§ 160-161 Administrative appeal and variance procedure.

A.

Application procedure.

[Amended 3-11-1995 ATM by Art. 18]

(1)

An aggrieved party may apply for an administrative appeal, a variance, or both.

[Amended 3-28-2009 ATM by Art. 21]

(2)

An application is made by filing with the Board of Appeals a written notice of appeal or application for a variance on forms provided. The application must be received at the Alfred Town Hall, addressed to the Board of Appeals, within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty-day requirement.

[Amended 3-28-2009 ATM by Art. 21]

The application must include the following:

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(a)

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

(b)

A concise written statement stating what relief is requested and why the appeal or variance should be granted.

(c)

The application fee.

(3)

When an application is filed, it must be examined for completeness and accuracy, and particularly to determine whether all information necessary to make a determination has been supplied. Where information is lacking or inadequate at the time of submission, the applicant must be notified in writing of the incompleteness. A hearing may not be set until the application is complete. It is the responsibility of the Board of Appeals Chair to determine completeness.

(4)

Upon being notified of an application for an administrative appeal or a variance, the CEO, or the Planning Board, if the appeal is of their decision in the administration of Article [XIX](#), must transmit to the Board of Appeals copies of all the written documentation which makes up the record of the decision.

(5)

A copy of any variance request located in any Shoreland Zone, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

[Added 3-28-2009 ATM by Art. 21

Editor's Note: This Article also renumbered former Subsection A(5) and (6) as Subsection [A\(6\)](#) and [\(7\)](#), respectively.

(6)

All advertising and administrative costs of an appeal or a variance must be borne by the applicant and must be paid at the public hearing.

(7)

The Board of Appeals shall hold a public hearing on the appeal or variance request within 35 days of the receipt of the completed application, unless this time period is extended by agreement between the Board and the applicant.

[Amended 3-28-2009 ATM by Art. 21]

B.

Notification.

(1)

At least 10 days prior to the date of the hearing on the appeal, the Board of Appeals must cause to be posted in the Town Hall and must cause to be published once in a newspaper of general circulation in the Town a notice which includes:

(a)

The name of the person appealing.

(b)

A brief description of the property involved.

(c)

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A brief description of the decision appealed from, or the nature of a variance appeal.

(d)

The time and place of the Board's hearing.

(2)

At least 10 days prior to the date set for hearing, the Board of Appeals must also notify by certified mail:

(a)

All property owners of record whose properties lie within 200 feet of the property in the Village or Center Village District and 500 feet of the property in other districts, and

(b)

The person making the appeal.

(c)

The Planning Board, the CEO, and any other party of record must also be notified in writing.

(3)

The Board of Appeals must keep a record of all parties notified.

(4)

Failure of any property owner to receive a notice of any public hearing does not necessitate another hearing or invalidate any action by the Board of Appeals.

C.

Hearings.

(1)

When the Board of Appeals reviews a decision of the Code Enforcement Officer or is considering a variance request, the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

[Amended 3-28-2009 ATM by Art. 21]

The Board of Appeals may exclude irrelevant, immaterial, or unduly repetitious evidence. Every party has the right to present a case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.

When the Board of Appeals hears a decision of the Planning Board, however, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon 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 only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(2)

The applicant's case is heard first. To maintain orderly procedure, each side has the right to proceed without interruption. All persons at the hearing must abide by the order of the Chair.

(3)

At any hearing, a party may be represented by an agent.

(4)

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Hearings may not be continued to other times except for good cause. If the Board of Appeals votes to continue a hearing, the motion to continue must include the reason for the continuance and the time and date to which the hearing is continued.

(5)

The CEO or designated assistant, or the Planning Board Chair if the appeals is of the Planning Board's decision in the administration of Article [XIX](#), must attend all hearings and may present to the Board of Appeals all plans, photographs, or other material the CEO or Planning Board deems appropriate for an understanding of the appeal.

(6)

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

(7)

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

[Added 3-28-2009 ATM by Art. 21

Editor's Note: This Article also renumbered former Subsection C(7) as Subsection [C\(8\)](#).

(8)

The Board of Appeals may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose and purchasing policies of the Town.

§ 160-162 Decisions of the Board of Appeals

A.

The concurring vote of at least four members of the Board of Appeals is necessary to grant an administrative appeal or a variance. A tie vote fails.

B.

The Board of Appeals shall decide all administrative appeals and variances within 35 days after the close of the hearing, and shall issue a written decision.

[Amended 3-28-2009 ATM by Art. 21]

C.

All decisions become a part of the record and must include a statement of findings and conclusions as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented, and the appropriate order, relief, or denial thereof. Notice of any decision must be mailed or hand delivered to the applicant and agent, the Planning Board, the CEO, and the municipal officers within seven days of the decision date.

D.

Upon notification of the approval of an administrative appeal or a variance by the Board of Appeals, the CEO or Planning Board must comply with the order of the Board of Appeals.

E.

The Board shall cause written notice of its decision to be mailed or hand-delivered to the Department of Environmental Protection within seven days of the decision.

[Amended 3-28-2009 ATM by Art. 21]

F.

Whenever the Board of Appeals grants a variance, 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, and indicating the act that a variance, including any conditions on the variance, has been granted and the date of the granting, must be prepared in recordable form. This certificate must be recorded by the property owner in the York County Registry of Deeds within 90 days of the date of the final written

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approval of the variance or the variance is void. The variance is not valid until recorded. For the purpose of this subsection, the date of the final written approval is the date stated on the written approval.

G.

Except as provided by 30-A M.R.S.A. § 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days from the date of any decision of the Board of Appeals.

[Amended 3-28-2009 ATM by Art. 21]

H.

If the Board of Appeals cannot judge information presented to it because of its technical nature, the Board may, after notification to, and at the expense of, the applicant, employ one or more independent consultants to review the information. The estimated costs of such studies must be deposited with the Town Treasurer prior to their undertaking. Any money not spent must be reimbursed to the applicant.

[Added 3-11-1995 ATM by Art. 18]

I.

Reconsideration. In accordance with 30-A M.R.S.A. § 2691(3)(F), the Board of Appeals may reconsider any decision 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 being 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. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

[Added 3-28-2009 ATM by Art. 21]

Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

§ 160-163 Stay of proceedings.

An application to the Board of Appeals for the granting of an administrative appeal or a variance stays all legal proceedings related to that administrative appeal or variance unless the CEO certifies to the Board of Appeals, after the notice of administrative appeal or variance has been filed with the CEO, that by reason of facts stated in the certificate a stay would, in the CEO's opinion, cause irreparable harm to property or create a threat to the life or health of any person, including the applicant. In such case, the CEO, if legally authorized by state law or local ordinance, may seek injunctive relief or, in appropriate cases, refer the matter to the municipal officers for prosecution.

§ 160-164 Fees.

The application fee must be set annually by the Board of Selectmen.