

**An Ordinance Governing the Board of Appeals  
Town of Sidney, Maine**

**I. Establishment and Organization**

- A. A Board of Appeals is hereby established which shall consist of five (5) members and two (2) alternates. The term of office for members and alternates is three years, serving staggering terms. Neither a municipal officer nor his/her spouse may be a member of the Board of Appeals. Members of the Board of Appeals shall be appointed by the Municipal Officers. When there is a permanent vacancy, the Municipal Officers shall appoint a new member for the remainder of the unexpired term. Members of the Board of Appeals may be removed from office by the Municipal Officers for cause upon written charges and after hearing.
- B. The Board of Appeals shall elect a chairperson and secretary from its own membership. The Board secretary shall keep minutes of all meetings of the Board and a record of all resolutions, transactions, correspondence, findings and determinations. A copy of the minutes of the board meetings shall be filed with the Town Clerk as a permanent and official record. All board records shall be deemed to be public information.

**II. Jurisdiction**

- A. The Board of Appeals is authorized to hear appeals from decisions made under the following Ordinances:
  - 1. Zoning Ordinance of the Town of Sidney, Maine.
  - 2. Multi-Family Dwelling Unit Subdivision Ordinance of the Town of Sidney, Maine.
  - 3. Mobile Home Park Ordinance for the Town of Sidney, Maine.
  - 4. Subdivision Regulations of the Town of Sidney, Maine.
  - 5. Shoreland Zoning Ordinance of the Town of Sidney
  - 6. Ordinance to Regulate Automobile Graveyards and Junkyards of the Town of Sidney, Maine
- B. The Board of Appeals authority does not include appeals from enforcement decisions made by the Code Enforcement Officer.

**III. Powers and Duties of the Board of Appeals**

- A. The Board of Appeals shall have the following powers:
  - 1. Administrative Review. 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 administrative decision, order, requirement or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration of this Ordinance, except for a decision of

the Planning Board relative to a subdivision application, which shall be appealable directly to Superior Court. A de novo review looks at the factual and legal issues, afresh, undertakes its own credibility determinations, evaluates the evidence presented, and draws its own conclusions.

2. Variances. To authorize variances in specific cases, but only within the limitations set forth in this Ordinance.
3. Interpretations of Ordinances.

#### **IV. Variances**

A. Variances may be permitted only under the following conditions:

1. Variances are obtainable only for height, minimum lot size, structure size, setbacks, and open space requirements.
2. Variances cannot, under any circumstances, be obtainable for establishment of any uses otherwise prohibited.
3. The Board is authorized to hear and decide three types of variance Requests: "Undue Hardship Variances", "Setback Variances for Single Family Dwellings" and "Disability Variances" only if it finds that All criteria under each type of request are met.
  - a. Undue Hardship Variance as provided on 30-A M.R.S.A 4353(4)
    - i. That the land in question cannot yield a reasonable return unless a variance is granted.
    - ii. That the need for a variance is due to the unique circumstances of the property and not the general conditions in the neighborhood.
    - iii. That the granting of a variance will not alter the essential character of the locality, and
    - iv. That the hardship is not the result of action taken by the applicant or a prior owner. Such hardship may be found by the Board of Appeals where the Land Use Ordinance, as applied to the applicant's property , substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put. Mere inconvenience to the property owner shall not satisfy this requirement. Neither financial hardship alone nor pleading that a greater profit may be realized from the applicant's property were a variance granted shall be sufficient evidence of necessary hardship.
  - b. Setback Variance for a Single Family Dwelling as provided in 30-A M.R.S.A 4353 (4-B)
    - i. That the need for a variance is due to the unique

circumstances of the property and not to the general conditions of the neighborhood;

ii. That the granting of a variance will not alter the essential character of the locality;

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

iv. That the granting of a variance will not substantially reduce or impair the use of abutting property; and

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

c. Disability Variance as provided in 30-A M.R.S.A 4353(4)

4. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the Ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end.

## **V. Appeal Procedure**

### **A. Making an Appeal**

1. An administrative appeal may be taken to the Board of Appeals by an aggrieved person from any administrative decision of the Code Enforcement Officer or Planning Board. Such appeals shall be taken within thirty (30) days 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.
2. An application for a variance may be filed directly with the Board of Appeals in accordance with the procedures below.
3. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:
  - a. A sketch drawn to scale of 1" = 100' showing lot lines, location of existing building and other physical features pertinent to the variance request.
  - b. A concise written statement stating what variance is requested.
4. The Board of Appeals shall notify the Board of Selectmen, Planning Board, Code Enforcement Officer, and applicant of the appeal.
5. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board shall transmit to the Board of Appeals all the papers specifying the record of the decision appealed from.

6. The Board of Appeals shall hold a public hearing on the appeal within 60 days of its receipt of an appeal application. Notice of the date, time, and place of the hearing shall be placed in newspapers of general circulation in the area at least 7 days prior to the hearing. The applicant will pay the cost of the publication, with a minimum of \$150 paid in advance of the hearing. Publication costs in excess of the initial fee will be charged to the applicant. All costs to be borne as follows:
  - a. 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 shall be borne by the person(s) making the appeal.
  - b. If the appeal is made by the applicant of the project under review, that applicant shall bear the cost of publication of the notice.
7. The Board of Appeals shall provide written notice of the appeal to all abutting landowners.

**B. Hearings**

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.
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.
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.
4. The Code Enforcement Officer or representative of the Planning Board shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
5. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings shall constitute the record.

**C. Decisions of the Board of Appeals**

1. A majority of the members of the Board shall constitute a quorum for the purpose of conducting an official meeting. A member who abstains shall not be counted in determining whether a quorum exists.
2. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination

of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

3. The person filing the appeal shall have the burden of proof.
4. The Board shall decide all appeals within thirty five (35) days after hearing, and shall issue a written decision on all appeals.
5. 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, upon all the material issues of fact, law, or discretion presented, and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Code Enforcement Officer, Planning Board, and Selectmen within seven (7) days of the decision date.
6. Upon notification of the granting of an appeal by the Board or Appeals the Code Enforcement Officer, or the Planning Board shall promptly issue a permit in accordance with the conditions of approval.
7. A copy of all variances effecting shoreland zoning granted by the Board of Appeals shall be submitted to the Dept. of Environmental Protection within 14 days of the decision.

**D. Appeal to Superior Court**

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 forty-five days from the date of any decision of the Board of Appeals.

**VI. Reconsideration**

- A. The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

**VII. Stay of Proceedings**

- A. An appeal stays all legal proceedings in a furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

**VIII. Effective Date**

- A. The effective date of this Ordinance is March 20, 1993. Amended March 19, 2011.