

Town of St. George, Maine

BOARD OF APPEALS ORDINANCE

Enacted: May 9, 2022
Amended: May 8, 2023
(effective May 8, 2023)

A true copy

Attest: _____

A handwritten signature in black ink, appearing to read 'Richard A. Erb', written over a horizontal line.

Richard A. Erb,
Town Clerk

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TOWN OF ST. GEORGE, MAINE
BOARD OF APPEALS ORDINANCE

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TOWN OF ST. GEORGE, MAINE
BOARD OF APPEALS ORDINANCE

CHAPTER 1. GENERAL PROVISIONS

SECTION 1. TITLE. This ordinance shall be known and may be cited as the Board of Appeals Ordinance.

SECTION 2. DEFINITIONS AND RULES OF INTERPRETATION. Certain terms used in this ordinance are defined in chapter 5. Rules for interpreting this ordinance are also found in chapter 5.

SECTION 3. AUTHORITY. This Ordinance is adopted pursuant to the enabling provisions of article VIII, part 2, section 1 of the Maine Constitution (Home Rule); 30-A M.R.S. chapters 111 (Home Rule), 141 (Ordinances), and 187 (Planning and Land Use Regulation), including in particular § 4353 (Zoning Adjustment); 30-A M.R.S. §§ 2691 (Board of Appeals); and various other provisions of law.

SECTION 4. PURPOSES. The purposes of this ordinance are (1) to make consistent the rules relating to administrative appeals and variance applications by consolidating into a single ordinance all provisions relating to the Board of Appeals that, before the enactment of this ordinance, appeared in a number of the Town's ordinances, and (2) to make certain changes to those rules, including revisions to the standard of review that applies to appeals from actions and failures to act by covered Town officials.

SECTION 5. APPLICABILITY. This ordinance applies to (1) all administrative appeals over which the Board of Appeals is given jurisdiction under section 12, and (2) all variance applications filed with the Board of Appeals under any land use ordinance.

SECTION 6. AVAILABILITY. A certified copy of this ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of the availability of this ordinance, and its text, shall be posted on the Town's web site.

SECTION 7. CONFLICTS WITHIN THIS ORDINANCE AND WITH OTHER LAWS. If a provision of this ordinance conflicts with, or is inconsistent with, another provision of this ordinance or of any other law, the more restrictive provision shall control unless expressly provided otherwise in this ordinance or the other law.

SECTION 8. VALIDITY AND SEVERABILITY. If any provision of this ordinance is held or becomes invalid or void, by virtue of any decision of any court of competent jurisdiction, or by virtue of any controlling federal, state, or other law, then only the provision specifically held to be invalid or void in such decision of the court, or specifically controlled by such law, shall be affected, and the remaining portions of this ordinance shall remain in full force and effect.

SECTION 9. EFFECTIVE DATE. This ordinance shall take effect when it is approved by a majority of the votes cast by the registered voters of the Town present at a regular or special town meeting.

SECTION 10. AMENDMENT. This ordinance may be amended in part or in whole by a majority of the votes cast by the registered voters of the Town present at a regular or special town meeting. Any amendment shall take effect as of the date of the town meeting.

SECTION 11. BOARD OF APPEALS.

(a) **CONTINUATION OF EXISTENCE.** The Board of Appeals previously created shall continue in existence, and its members shall be appointed in accordance with the Town Charter. The persons who are members of the Board of Appeals on the effective date of this ordinance shall continue in their positions for the terms to which they were appointed, subject to earlier removal as permitted by law.

(b) **QUORUM AND VOTING.** The number of members of the Board of Appeals constituting a quorum for the purpose of taking any action and the vote required to decide any matter shall be as provided in the Town Charter.

CHAPTER 2. JURISDICTION OF BOARD OF APPEALS

SECTION 12. JURISDICTION OVER ADMINISTRATIVE APPEALS.

(a) The Board of Appeals shall have jurisdiction—

(1) to hear and decide administrative appeals, under an appellate standard of review, when it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made in writing by, or a failure to act by, a covered board or committee in the administration or interpretation of any covered ordinance;

(2) to hear and decide administrative appeals, under a *de novo* standard of review, when it is alleged by an aggrieved party that there is an error in any order,

requirement, decision, or determination made in writing by a covered Town official in issuing or denying a permit or license under any covered ordinance;

(3) to hear and decide administrative appeals, under a *de novo* standard of review, when it is alleged by the subject of an enforcement action taken by a covered Town official that the action was taken in error; and

(4) in deciding an administrative appeal, to interpret any provision of this ordinance or any relevant covered ordinance that is called into question.

(b) The Board of Appeals shall not have jurisdiction over an administrative appeal based on the failure or refusal of a covered Town official to take an enforcement action under a covered ordinance.

(c) The Board of Appeals shall not have jurisdiction to require the Select Board to pursue, or refrain from pursuing, legal action to enforce any decision on an enforcement matter. The pendency of an administrative appeal shall not prevent the Select Board from pursuing any such legal action.

SECTION 13. JURISDICTION OVER VARIANCE APPLICATIONS. The Board of Appeals shall have jurisdiction to hear and decide, under a *de novo* standard of review, applications for variances from the strict application of the terms of any land use ordinance, within the limitations set forth in this ordinance and, in deciding a variance application, to interpret any provision of this ordinance or any relevant covered ordinance that is called into question. Except for disability variances under section 17(b), the jurisdiction of the Board of Appeals over variance applications is exclusive.

CHAPTER 3. VARIANCES

SECTION 14. GENERAL REQUIREMENTS IN VARIANCE APPLICATIONS.

(a) The Board of Appeals may grant variances only from requirements of a land use ordinance relating to lot area, lot coverage, frontage, and setback. It shall not grant a variance for the establishment of any use prohibited by a land use ordinance.

(b) Except as provided in subsection (c), the Board of Appeals shall not grant a variance application filed as part of an administrative appeal from a decision of the Planning Board unless (1) the Planning Board found that the proposed structure or use meets all of the standards of the relevant land use ordinances except for the specific provision that has created the nonconformity and from which relief is sought, and (2) the administrative appeal does not call that finding into question.

(c) Notwithstanding subsection (b), the Board of Appeals may grant a variance application filed as part of an administrative appeal in which the Planning Board denied the underlying application on one or more bases in addition to the specific provision that has created the nonconformity and from which relief is sought, if the Board of Appeals determines that the Planning Board's conclusions on the other bases were erroneous.

(d) The Board of Appeals shall limit any variance as strictly as possible in order to ensure conformity with the purposes and provisions of the relevant land use 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 so imposed.

SECTION 15. VARIANCES BASED ON UNDUE HARDSHIP. Except for disability variances under section 17, the Board of Appeals may grant a variance from requirements of a land use ordinance relating to lot area, lot coverage, frontage, and setback only when strict application of the ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this section means that all of the following requirements are satisfied:

(1) the land in question cannot yield a reasonable return unless a variance is granted; and

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

(3) the granting of a variance will not alter the essential character of the locality; and

(4) the hardship is not the result of action taken by the applicant or a prior owner.

SECTION 16. VARIANCES FROM FLOODPLAIN MANAGEMENT REQUIREMENTS. The Board of Appeals may grant a variance from any requirement under the Floodplain Management Ordinance only if the applicant meets the requirements of that ordinance in addition to the requirements of section 15.

SECTION 17. DISABILITY VARIANCES.

(a) The Board of Appeals may grant a disability variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals 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 dwelling by the

person with the disability. The Board of Appeals 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 in or regularly uses the dwelling.

(b) The Code Enforcement Officer may issue a permit to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling of the person with a disability. The Code Enforcement Officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with the disability lives in or regularly uses the dwelling.

(c) For purposes of this section, “disability” means a physical or mental handicap described in 5 M.R.S. § 4553-A, subsection 1, paragraph A, and “structure necessary for access to or egress from the dwelling” includes railing, wall, and roof systems necessary for the safety or effectiveness of the portion of the structure that directly facilitates access.

CHAPTER 4. PROCEDURES

SECTION 18. ADMINISTRATIVE APPEAL PROCEDURES.

(a) Any aggrieved party may take an administrative appeal to the Board of Appeals by filing a timely application for an administrative appeal with the Town Clerk.

(b) An application for an administrative appeal in which a covered board or committee or a covered Town official has issued an official, written decision or order relating to a permit, license, or enforcement action is timely only if it is received in the Town Office within 30 days after the date of the written decision or order appealed from.

(c) An application for an administrative appeal from a failure to act on an application within the time required by the relevant ordinance is timely only if it is received in the Town Office, within 30 days after the date on which the failure to act occurred.

(d) The Board of Appeals shall not have jurisdiction to waive the timeliness requirements of subsections (a), (b), and (c), whether or not the parties consent, unless the applicant proves to the satisfaction of the Board of Appeals that the Town Office was inaccessible to receive the application on the last day of the 30-day period and that the application was received in the Town Office not later than the first business day after becoming accessible again.

(e) An application for an administrative appeal shall include—

(1) the name, mailing address, e-mail address, and telephone number of the appellant;

(2) a concise statement of why the appellant, if other than the applicant, has standing to file the administrative appeal;

(3) a concise written statement indicating what relief is requested and why the appeal should be granted, including a statement of why the decision of the covered board or committee or the covered Town official was incorrect; and

(4) 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 sought.

(f) Upon receiving an application for an administrative appeal, the Town Clerk shall transmit to the Board of Appeals and the relevant covered Town official the application and all of the papers, recordings, photographs, and other documents constituting the record of the decision appealed from.

(g) The Board of Appeals shall hold a public hearing on an administrative appeal within 35 days after its receipt of a complete written application unless this time period is extended by the Board of Appeals with the consent of the parties.

SECTION 19. VARIANCE PROCEDURES.

(a) A property owner may request a variance directly from the Board of Appeals without first applying for a permit. If, however, the Planning Board or the Code Enforcement Officer denies a permit application in whole or part on a basis that could be resolved in the applicant's favor by a variance, the applicant may include a variance application in an administrative appeal.

(b) An application for a variance shall be made by filing with the Town Clerk a written application for variance which includes—

(1) the name, mailing address, e-mail address, and telephone number of the applicant;

(2) the property location, map and lot number, and a copy of the tax map showing the property and surrounding location;

(3) a written description of the proposed project;

(4) if the property is in whole or part within the shoreland zone, an indication of the zoning district in which it is located;

(5) a concise written statement indicating what relief is requested, including the measurement of the requested variance, and why the variance should be granted;

(6) a concise written statement demonstrating that the application satisfies the requirements of section 15, 16, or 17, as applicable; and

(7) 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 sought.

(b) Upon receiving an application for a variance, the Town Clerk shall transmit it to the Code Enforcement Officer, the Planning Board, and the Board of Appeals.

(c) If a variance is requested for a property in whole or in part located in the shoreland zone, the Code Enforcement Officer shall forward a copy of the application and all supporting information supplied by the applicant to the Commissioner of the Maine 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.

(d) The Board of Appeals shall hold a public hearing on a variance application within 35 days after its receipt of a complete written application for variance unless this time period is extended by the Board of Appeals with the consent of the parties.

SECTION 20. NOTICE OF HEARING.

(a) Public notice of a public hearing on an application for an administrative appeal or a variance, stating its purpose, time, date, and place shall be given by—

(1) posting the notice on the Town's web site and distributing the notice to the Town's public e-mail distribution list at least seven days before the hearing; and

(2) sending the notice by first-class mail or by e-mail at least ten days before the hearing to—

(A) the appellant;

(B) the person who filed the underlying application if that person is not the appellant;

(C) the relevant covered board or committee or covered Town official;

(D) the Select Board; and

(E) in the case of an appeal under a land use ordinance or a variance application, owners of land abutting or within 300 feet from any property line of the subject property.

The mailing required by subparagraph (2)(E) shall be based on the tax maps and related records kept by the Town. If the Town's records are out of date because of a failure or delay by the Register of Deeds in notifying it of a change in ownership, the Town shall not be responsible for any failure to notify the current owner.

(b) Failure of an abutter or other property owner specified in subparagraph (a)(2)(E) to receive the notice shall not invalidate the public hearing or require the Board of Appeals to schedule a new public hearing.

(c) The Board of Appeals may continue a public hearing by announcement at the hearing of the date, time, and place to which it is continued. No other notice of the continued hearing need be given.

SECTION 21. CONDUCT OF HEARINGS.

(a) At the hearing on an administrative appeal or variance application, the Board of Appeals shall receive and consider the factual evidence appropriate for the standard of review in the proceeding and shall hear and consider oral and written arguments from the parties in support of their positions. In conducting the hearing, the Chair of the Board of Appeals may exclude evidence and argument that is irrelevant, immaterial, or unduly repetitious.

(b) In an administrative appeal from a covered board or committee that is conducted on an appellate standard of review, if the Board of Appeals determines that the records of the proceedings of the covered board or committee are inadequate, the Board of Appeals may remand the matter for additional fact finding or a further explanation of the basis for the decision of the board or committee.

SECTION 22. DECISION BY BOARD OF APPEALS.

(a) The Board of Appeals shall decide all administrative appeals and variance applications within 35 days after the closing of the public hearing unless this time period is extended by the Board of Appeals with the consent of the parties, and shall issue a written decision within seven days after rendering its final decision. The written decision shall state the basis for the conclusions of law reached by the Board of Appeals. In the case of a decision on an administrative appeal from an action or failure to act of a covered Town official or a variance application, the written decision shall also include a statement of the facts found by the Board of Appeals in support of its decision.

(b) Within seven business days after the approval of the final written decision, the Board of Appeals shall cause the written decision to be sent by first-class mail, hand-delivery, or e-mail to—

(A) the appellant;

(B) the person who filed the underlying application if that person is not the appellant;

(C) the relevant covered board or committee or covered Town official;

(D) the Select Board; and

(E) in the case of property located in whole or part in the shoreland zone, to the Maine Department of Environmental Protection.

SECTION 23. RECONSIDERATION. In accordance with 30-A M.R.S. § 2691, subsection 3, paragraph F, the Board of Appeals may reconsider any decision within 45 days after its prior decision. A request to the Board of Appeals to reconsider a decision shall be in writing and filed by a party to the appeal with the Town Clerk within ten days after the decision that is sought to be reconsidered, and the Town Clerk shall promptly distribute the request to the Board of Appeals and the parties. A vote to reconsider and the action taken on that reconsideration shall occur at a public hearing, notice of which shall be given in accordance with section 20, and be completed within 45 days after the date of the vote by the Board of Appeals approving the final written decision. The Board of Appeals may conduct additional hearings and, except in the case of reconsideration of an administrative appeal from the Planning Board, receive additional evidence and testimony. Reconsideration of a decision shall require a positive vote of the majority of the members of the Board of Appeals originally voting on the decision. Notice of the decision shall be sent by first-class mail or e-mail to each party to the appeal.

SECTION 24. APPEAL TO SUPERIOR COURT. An appeal from any action of the Board of Appeals may be taken to the Superior Court in accordance with Maine law and the rules of that court.

CHAPTER 5. DEFINITIONS AND RULES OF INTERPRETATION

PART 1. DEFINITIONS

SECTION 25. DEFINITIONS. In this ordinance the following terms have the following meanings unless the context requires otherwise.

“Aggrieved party” means—

(1) the applicant for a permit or license under a covered ordinance whose application has been denied or approved subject to conditions to which the applicant did not consent;

(2) a person whose land abuts land for which such a permit or license has been granted or denied; or

(3) any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or license.

The term does not include a person affected by the failure or refusal by a covered Town official to take an enforcement action under a covered ordinance.

“Business day” means a day other than a Saturday, a Sunday, a legal holiday in the State of Maine or the Town, or any other day on which the Town Office is not open for business.

“C.M.R.” means the Code of Maine Regulations, as in effect from time to time.

“Covered board or committee” means—

(1) The Select Board with respect to any decision to deny, suspend, or revoke a permit under the Special Amusement Ordinance, if that ordinance has been enacted;

(2) the Planning Board with respect to each land use ordinance; and

(3) the Addressing Committee with respect to the Addressing Ordinance.

“Covered ordinance” means a land use ordinance, the Addressing Ordinance, the Coastal Waters Management Ordinance, the Special Amusement Ordinance, if that ordinance has been enacted, and any other ordinance enacted after the effective date of this ordinance that provides that appeals shall be governed by this ordinance. The term also includes the Maine Subsurface Wastewater Disposal Rules of the Maine Department of Health and Human Services, 10-144 C.M.R. chapter 241, to the extent the Local Plumbing Inspector has the power to act thereunder.

“Covered Town official” means the Code Enforcement Officer, the Local Plumbing Inspector, the Harbor Master, the Addressing Officer, and any other Town official who acts under a covered ordinance in a decision-making or enforcement capacity, including any person appointed as an assistant or deputy of any covered Town official.

“Enforcement action” means a notice of violation, stop-work order, suspension or revocation of a permit or license, or other action by a covered Town official to enforce the provisions of a covered ordinance or the conditions or requirements of a permit or license under a covered ordinance.

“Land use ordinance” means the Land Use Ordinance, the Shoreland Zoning Ordinance, and the Subdivision Ordinance.

“M.R.S.” means the Maine Revised Statutes, as in effect from time to time.

“Person” means an individual, government, governmental agency, municipality, trust, estate, corporation, general or limited partnership, limited liability company, association, other legal entity, or two or more individuals having a joint or common interest.

“Shoreland zone” has the meaning given to that term in the Shoreland Zoning Ordinance.

“Town” means the Town of St. George, Maine.

PART 2. RULES OF INTERPRETATION

SECTION 26. REFERENCES WITHIN THIS ORDINANCE.

(a) Sections in this ordinance may be divided into subsections identified by lower-case letters in parentheses, or into paragraphs identified by Arabic numerals in parentheses. Subsections in this ordinance may also be divided into paragraphs identified

by Arabic numerals in parentheses. Paragraphs in this ordinance may be divided into subparagraphs identified by upper-case letters in parentheses.

(b) Whenever this ordinance refers to a “chapter” or “section” without further definite reference, it refers to a section of this ordinance. Whenever this ordinance refers to a “part” without further definite reference, it refers to a part of the chapter in which the reference occurs. Whenever this ordinance refers to a “subsection,” a “paragraph,” or a “subparagraph” without further definite reference, it refers, respectively, to a subsection of the section in which the reference occurs, a paragraph of the section or subsection in which the reference occurs, or a subparagraph of the paragraph in which the reference occurs.

SECTION 27. REFERENCES TO OTHER LAWS.

(a) Whenever this ordinance refers to a named ordinance without further definite reference, it refers to an ordinance of the Town by that name.

(b) Whenever this ordinance refers to a law or regulation of the United States or the State of Maine, or an ordinance of the Town, the reference is to that law, regulation, or ordinance as in effect on the effective date of this ordinance and as it may be amended thereafter, and to any law or regulation that replaces that law or regulation.

SECTION 28. GRAMMATICAL MATTERS. In this ordinance—

(1) “or” is not exclusive; it refers to one or more, or to all, of the listed items;

(2) references in the singular include the plural, and *vice versa*;

(3) references to one gender include all other genders;

(4) “shall” and “must” are equivalent and indicate a mandatory duty, action, or requirement; and

(5) “may” indicates authorization or permission to act, but “may not” is mandatory and prohibits the taking of the specified act.

SECTION 29. COUNTING DAYS. When this ordinance specifies a number of days after a specified event in which an action must or may be taken—

(1) the first day of the specified number is the day immediately following the day the specified event occurred;

(2) the action is timely only if taken not later than the close of regular business hours on the last day at the place where the action is to be taken;

(3) all days between the first and last day are counted, including days that are not business days, unless the period is stated to be a specified number of business days; and

(4) if the last day for the action to be taken would fall on a day that is not a business day, the period is extended to the next following business day.