

Board of Appeals Ordinance for the Town of Starks, Maine

Adopted March 11, 2016

Amended March 8, 2025

ENACTED: 3/8/2025 _____
Date

EFFECTIVE: 3/8/2025 _____
Date

CERTIFIED BY: *Joyelle* _____
Name
Clerk _____
Title

Affix Seal

Table of Contents

Establishment of Town of Starks Board of Appeals and Repeal of Prior Ordinance.....	3
I. General Provisions.....	3
II. Appointments.....	4
III. Officers and Duties.....	4
IV. Conflicts of Interest.....	5
V. Authority.....	6
VI. Meetings.....	8
VII. Voting.....	9
VIII. Appeal Procedure.....	10
IX. Hearings.....	11
X. Decisions.....	12
XI. Reconsiderations.....	13
XII. Appeals to Superior Court.....	14
XIII. Severability.....	14
XIV. Amendments.....	14
XV. Effective Date.....	14

Establishment of Town of Starks Board of Appeals and Repeal of Prior Ordinance

Upon approval of this ordinance, the Board of Appeals Ordinance for the Town of Starks, Maine, previously adopted on March 11, 2016, is hereby repealed, with the exception of those provisions that established and re-established the Town of Starks Board of Appeals.

I. General Provisions

- A. For purposes of this Ordinance, the following terms are defined as follows: "Board" means the Town of Starks Board of Appeals; "Selectmen" means the Town of Starks Board of Selectmen; "Code Enforcement Officer" means Town of Starks Code Enforcement Officer; and "Planning Board" means Town of Starks Planning Board.
- B. The Board of Appeals hears and decides request for appeals and variances from decisions under Town of Starks' ordinances that designate the Board to hear and decide such appeals and variances. The Appeals Board conducts its business in accordance with Maine State Statutes, Town ordinances, and Board procedures.
- C. It shall be the responsibility of the Board to become familiar with all the duly enacted ordinances of the Town which it may be expected to act upon as well as with the applicable state statutes.
- D. It shall be the responsibility of the Board to be familiar with the "Comprehensive Plan of Starks".
- E. The Chairperson or their designee may contact the Maine Municipal Association for any research and legal advice necessary for the Board's work.
- F. The Board shall have access to municipal resources reasonable and necessary to conduct its business.
- G. The appellant filing the appeal has the burden of proof.

II. Appointments

- A. The Board shall consist of 5 regular members and 2 alternate members appointed by the Selectmen for terms of 5 years each, or until a different successor is appointed. These terms shall be staggered to preserve continuity on the Board and shall expire on April 30th. The Chairperson may designate an alternate to serve in the place of an absent member or any member with a conflict of interest or bias.
- B. All Board members must be legal residents of Starks.
- C. Neither a Selectman, Planning Board member, or Code Enforcement Officer, nor their spouse or domestic partner, may be a full or alternate member of the Board.
- D. Any member of the Board may be removed from the Board for cause, by the Selectmen before expiration of their term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against them. The term "for cause" shall include, but not be limited to, failure to attend 3 consecutive Board meetings or hearings without sufficient justifications or voting when the member has a "conflict of interest or bias".
- E. When there is a permanent vacancy of either a full or alternate member, the Secretary shall immediately notify the Town Clerk. The Selectmen shall within 60 days appoint a person to serve for the unexpired term.

III. Officers and Duties

- A. The officers of the Board shall consist of a Chairperson, Vice-Chairperson, and Secretary, who shall be elected annually by a majority of the Board, and shall serve until their successors are elected.
- B. Chairperson. The Chairperson shall perform all duties required by law and this Ordinance and preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Board.

- C. Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the Chairperson, and shall have all the powers of Chairperson during the Chairperson's absence, disability or disqualification.
- D. Secretary. The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to 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; finding of facts 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 and must be filed at the Starks Town Office with the Town Clerk.
- E. Education. Members of the Board must attend a Maine Municipal Association workshop for Planning Boards and Appeals Boards within 12 months of appointment and within 12 months of reappointment.

IV. Conflicts of Interest

- A. 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 the member whose potential conflict is under consideration.
- B. The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (grandparent, spouse, offspring whether natural or adopted, grandchildren either birth or by marriage, domestic partner, e.g.) or to their employer or the employer of any member of the person's immediate family.
- C. The term "bias" shall be construed to mean that anyone who is prejudiced about an applicant must remove themselves from the process.

V. Authority

- A. The Board shall have the following powers to be exercised only upon receipt of a written request for an appeal by an aggrieved party or a request for a variance by the applicant.

1. The Board may interpret the provisions of any applicable town ordinance it has been given jurisdiction to hear.
2. In reviewing an application on any matter, the provisions in any applicable local ordinance or state or federal statute shall take precedence over the provisions of this Ordinance whenever a conflict occurs. For appeals and variances within shoreland zones see Section 16,H of the “Shoreland Zoning Ordinance for the Town of Starks” and within floodplains see Article IX of the town’s Floodplain Management Ordinance. In all other instances this Ordinance shall control.
3. The Board may not take up any appeal or variance request unless the matter at issue has been officially decided by the Planning Board or the Code Enforcement Officer. The applicant requesting the appeal or variance must provide a copy of the Planning Board’s final decision document or Code Enforcement Officer’s written decision with their reasons for the decision.
4. If the Board grants an approval, its decision shall include instruction to the Code Enforcement Office or Planning Board, as applicable. to issue the permit or approval. The Board is not authorized to issue permits.
5. Appeals of Planning Board Decisions. The Appeals Board shall have the power to hear and decide, using an appellate review standard¹ and not using a de novo review standard, all appeals by any person directly or indirectly affected by any decision, action, or failure to act with respect to license, permit, or other required approval, or any application therefore, including, the grant, variance or special exception grant, denial, suspension, or revocation of any such license, permit, or other approval where it is alleged there is an error in any order, requirement, decision, or determination made or by failure to act by the Planning Board. The review and decision by the Board shall be based exclusively on the written record of the decision, and the Board shall modify or reverse the decision only if it makes a positive finding that the decision was clearly contrary to the requirements or standards of the applicable ordinance. If the Board finds that the written record is insufficient to support adjudication of the appeal, it shall remand the decision to the decision-making body for clarification and reconsideration.
6. Appeals of Code Enforcement Officer and Plumbing Inspector Decisions. The Board shall have the power to hear and decide, using the de novo standard, and not using an appellate standard, all appeals by any appellant where it is alleged there is an error in any decision or determination made by or failure to act by the Code Enforcement Officer pursuant to the Building Ordinance, the Shoreland Zoning Ordinance, the Wireless Communications Facilities Ordinance, the Floodplain Management Ordinance, any other ordinance or regulation where the Code Enforcement Officer is

¹ Note: Some of the Town’s ordinances use the term “Administrative Appeals”, which is interpreted to mean utilizing the appellate review standard.

the permitting authority, or the Plumbing Inspector pursuant to the Maine State Plumbing Code, and in other similar situations described in other Town of Starks Ordinances where the Appeals Board is required to make independent factual findings.

7. Variances: Shoreland Zoning Ordinance and Floodplain Ordinance. The Board shall have the power to hear and decide, using the de novo standard, and not using an appellate standard, all requests for variances pursuant to the “Shoreland Zoning Ordinance for the Town of Starks” and the “Floodplain Management Ordinance”.
8. Variances to other Town Ordinances where the Code Enforcement Officer is the permitting authority: The Board shall have the power to hear and decide, using the de novo standard, and not using an appellate standard, all requests for variances where the Code Enforcement Officer has issued a decision pursuant to the Building Ordinance, Wireless Communications Facilities Ordinance, or any other ordinance or regulation where the Code Enforcement Officer is the permitting authority. The Board shall grant requests for variances only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and their property would cause undue hardship. The Board shall limit any variances granted as strictly as possible to ensure conformance with the purposes and provisions of the applicable 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. The words "undue hardship" as used in the subsection mean:
 - a. That there are exceptional or unique circumstances relative to the property that do not pertain generally to other properties in the same neighborhood; and
 - b. That other property in the neighborhood will not be adversely affected; and
 - c. That such action will not be contrary to the objectives of the applicable ordinance; and
 - d. That any hardship is not the result of action taken by the applicant or prior owner.

- Notwithstanding the section above, the Board may grant a variance to an owner of a residential 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 shall restrict any variance granted under this subsection 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 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 the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include ramps, decks, and the like, necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to the sections below.

9. Variances to other Town Ordinances where the Planning Board is the permitting authority: The Appeals Board shall have the power to hear and decide, using the appellate standard, and not using de novo standard (excepting when necessary to show undue hardship), all requests for variances where the Planning Board has issued a decision pursuant to the Site Plan Review Ordinance, the Subdivision Ordinance, Wireless Communications Facilities Ordinance, or any other ordinance or regulation where the Planning Board is the permitting authority. The Board may use the de novo standard to accept new information related to the variance. The Board shall grant requests for variances only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and their property would cause undue hardship. The Board shall limit any variances granted as strictly as possible to ensure conformance with the purposes and provisions of the applicable 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. The words "undue hardship" as used in the subsection mean:
 - a. That there are exceptional or unique circumstances relative to the property that do not pertain generally to other properties in the same neighborhood; and
 - b. That other property in the neighborhood will not be adversely affected; and
 - c. That such action will not be contrary to the objectives of the applicable ordinance; and
 - d. That any hardship is not the result of action taken by the applicant or prior owner.

VI. Meetings

- A. Meeting(s) of the Board shall be held once every month or "as necessary".
- B. An annual organizational meeting of the Board shall be held in April of each year.
- C. Notice of meetings will be publicized in accordance with the Appeals Board's Public Notice Policy and state law.
- D. Special meetings of the Board may be called by the Chairperson in accordance with the Appeals Board's Public Notice Policy and state law. At least 7 days written notice of the time, place and business of the meeting shall be given to each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
- E. The Chairperson shall call a special meeting within 10 days of receipt of a written request from any 3 members of the Board which request shall specify matters to be considered at such a special meeting.

- F. The order of business at meetings of the Board should be as follows: 1) Perform roll call and take attendance; 2) Determine if adequate public notice has been given; 3) Address any conflicts of interest or bias; 4) Confirm a quorum, appoint alternates if their voting authority is needed; 5) Approve minutes of the preceding meeting; 6) Conduct old business; 7) Conduct new business; 8) Conduct site visit (when scheduled); 9) Public hearing (when scheduled); 10) Other business; 11) Adjournment.
- G. All meetings of the Board shall be open to the public; except executive sessions. No votes may be taken by the Board except in public meeting.
- H. Deliberations may be conducted in executive session on the following matters and not others to Title 1 M.R.S.A. § 405: consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a substantial disadvantage; and discussion or consideration of the appointment, duties, disciplining, resignation or dismissal of a Board member.

VII. Voting

- A. The quorum shall consist of 3 members of the Board.
- B. No hearing or meeting of the Board shall be held, nor any action taken in the absence of a quorum; however, those members present may request of the chairperson to call a special meeting for a subsequent date.
- C. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the entire membership of the Board unless otherwise specified herein.
- D. A tie vote or favorable vote by a lesser number than the required majority vote shall be considered a rejection of the application under consideration.
- E. If a member has a conflict or bias, said member shall not be counted by the Board in establishing the quorum for such matter. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the members, excluding the member who is being challenged.
- F. The Chairperson shall appoint an alternate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or

absent from a substantial portion of the hearing due to late arrival unless the regular member has familiarized him/herself with such matter by studying the hearing record. The alternate member will act for the regular member until the case is decided.

VIII. Appeal and Variance Procedures

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V must file an application for an appeal or a variance within 30 days of the date of the Planning Board's final decision document or Code enforcement Office's written decision.
- B. The appellant shall file an application for an appeal or variance with Town Clerk during regular office hours.
- C. Applications for appeals and variances shall include the following:
 - 1. An "Application Form for Appeals" or an "Application for Variances", as applicable, completed by the applicant.
 - 2. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot if pertinent to the relief sought. (Optional)
 - 3. The application fee in the form of a check made payable to "Treasurer, Town of Starks." The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application fee if the application is withdrawn within 15 days of date of filing, less all expenses incurred by the Town of Starks to review the application.
 - 4. Application fees are established and maintained by the Board of Selectmen in the Town of Starks Fee Schedule.
- D. The Town Clerk shall transmit the application for an appeal or variance to the Board and the Code Enforcement Officer and/or Planning Board, as applicable.
- E. Upon receiving an application for an appeal or a variance, the Code Enforcement Officer or Chairperson of the Planning Board, as appropriate, shall transmit to the Board all the papers constituting the record of the decision appealed from.
- F. Initial Meeting: The Chairperson of the Board of Appeals shall schedule a meeting of the Board to determine the following:
 - 1. The Board's jurisdiction over the request for the appeal or variance.

2. The appellant's right to appeal before the Board
3. The completeness of the application. If not complete, the Board shall specify what is needed for a complete application and will not continue the process until it determines it has a complete application.
4. Once the Board determines it has a complete application, the Board shall review the application and the record of the decision appealed from, schedule a site visit, if desired, and set a date for the public hearing. The site visit shall be publicized and conducted similarly to a meeting of the Board.

IX. Hearings

- A. The Board shall hold a public hearing within 35 days of its receipt of a complete written application, unless this time period is extended by the parties. Additional hearings may be held, as deemed necessary by the Board.
- B. The Board shall cause notice of the date, time and place of the hearing. The notice shall include the name of the appellant, and a description of the subject appeal or variance including the location of the subject property. The notice shall be given to the appellant making the application and be publicized in accordance with the Appeals Board Public Notice Policy and state law. The Board shall also cause notice of the hearing to be given to the Board of Selectmen, Town Clerk, the Planning Board, the Code Enforcement Officer, and abutting property owners. The Board may require the appellant to notify all abutters.
- C. The Chairperson may exclude irrelevant, immaterial or unduly repetitious testimony, at their discretion.
- D. The order of business at a public hearing shall be as follows:
 1. The Chairperson shall call the hearing to order.
 2. The Chairperson shall determine if adequate public notice has been given
 3. The Chairperson shall address any conflicts of interest or bias and confirm there is a quorum and appoint alternates to voting authority as needed.
 4. The Chairperson shall summarize the request for an appeal or variance and shall enter all correspondence and reports received into the record.
 5. The Board determines which individuals attending the hearing are "interested parties". "Interested parties" are those who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners and those who might be adversely affected by the Board's decision. Parties that may be affected may be required by the Board to consolidate or join their

appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the hearing. The Board of Selectmen, the Planning Board, and the Code Enforcement Officer shall automatically be made parties to the proceeding. Other persons attending the hearing and federal, state, municipal and other governmental- agencies shall be permitted to make oral or written statements and to submit oral and written questions through the Chair.

6. The appellant is given the opportunity; to present their case without interruption.
7. The Board and interested parties may ask questions of the appellant through the Chair.
8. The interested parties are given the opportunity to present their case. The Board may call its witnesses, such as the Code Enforcement Officer. The appellant may ask questions of the interested parties and Board witnesses directly.
9. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
10. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
11. The hearing is closed after all parties have been heard. If additional time is needed, such as to obtain additional information or provide additional time for public comment, the hearing may be continued at a later date. All participants shall be notified of the date, time, and place of the continued hearing.

X. Decisions

- A. The Board shall decide all appeals within 30 days from the date of the final hearing and shall issue a written decision on all appeals.
- B. The Board's final decision shall be made by written order signed by the Chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, 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.
- C. The Board, in reaching a decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan and by findings of fact by the Board in each case.
- D. The appellant filing the appeal or request for a variance has the burden of proof.

- E. Notice of any decision shall be provided to the applicant, their representative or agent, the Planning Board, the Code Enforcement Officer, and the Board of Selectmen within 7 days of the Board's decision. Any decisions affecting the Shoreland Zone shall be provided to the Maine Department of Environmental Protection pursuant to Section 16,H of the Shoreland Zoning Ordinance of the Town of Starks.
- F. Decisions of the Board shall be immediately filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- G. Unless otherwise specified, any decision of the Board shall expire and become null and void if the permit from the Planning Board or Code Enforcement Officer, as applicable, is not obtained by the appellant within 90 days from the date of the Board's decision; however, the Board may extend this time to an additional 90 days.

XI. Reconsiderations

- A. In accordance with 30-A M.R.S. section 2691(3)(F), the Board may reconsider any of its decisions. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within 45 days of the date of the vote on the original 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. The Board may conduct additional hearings and receive additional evidence and testimony.
- B. Reconsideration should be for one of the following reasons:
 - 1. The record contains significant factual errors due to frauds or mistake, regarding facts upon which the decision is based; or
 - 2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.
- C. Appeal of a reconsidered decision to Superior Court must be made by the appellant or aggrieved party within 15 days after the decision on reconsideration.

XII. Appeal to Superior Court

Any appellant may take an appeal or variance request, within 45 days of the date 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. This time period may be extended by the Court upon motion for good cause shown.

XIII. Severability

Each part of this Ordinance is severable and, if any phrase, clause, sentence, or provision is declared to be contrary to law, the validity of the remainder shall not be affected thereby unless the application of any remaining portion of the Ordinance would result in action being taken which is inconsistent with the objectives of this Ordinance.

XIV. Amendments

This Ordinance may be amended by a majority vote of the legislative body present at any regular or special town meeting, including through a referendum vote.

XV. Effective Date

This Ordinance and any amendments thereto shall take effect immediately upon adoption by the Town of Starks.