

TOWN OF BETHEL
MAINE

BOARD OF APPEALS
RULES OF PROCEDURE

ADOPTED: April 5, 2004
by the Bethel Board of Selectmen

BOARD OF APPEALS' RULES OF PROCEDURE

TABLE OF CONTENTS

<u>Article</u>	<u>Title</u>	<u>Page</u>
Article I	Purpose of Rules of Procedure and General Provisions	3
Article II	Adoption and Amendments	3
Article III	Membership and Officers of Board of Appeals	3
Article IV	Administrative and Professional Support	4
Article V	Conduct of Meetings	5
Article VI	Appeals/Variance Request Process and Development of Agenda	7
Article VII	Procedures to Give Notice to Public and Abutters	8
Article VIII	Consideration of Appeals or Variance Requests	9
Article IX	Legal Effect of Rules of Procedure	11

ARTICLE I PURPOSE OF RULES OF PROCEDURE AND GENERAL PROVISIONS

- Section 1. The purpose of these Rules is to set forth guidelines for the proper conduct of the Board of Appeals.
- Section 2. These Rules are consistent with Maine Revised Statutes Annotated (MSRA), Town Ordinances, and Comprehensive Plan of the Town of Bethel.
- Section 3. Board of Appeals members are expected to be reasonably knowledgeable in the applicable laws, regulations and Board policies and to abide by them.
- Section 4. Any provision/procedure not addressed in these Rules will be governed by the most readily available version of *Robert's Rules of Order*.

ARTICLE II ADOPTION AND AMENDMENTS

The Selectboard shall have the power to adopt these Rules of Procedure.

The Board of Appeals shall have the power to recommend to the Selectboard amendments to these Rules by three (3) or more affirmative votes at a Board of Appeals meeting provided that Board of Appeals members have received written notice of potential by-law amendments at least seven (7) days prior to scheduled consideration of the proposed amendments(s). Selectboard-initiated changes to these Rules shall be coordinated with the Board of Appeals.

ARTICLE III MEMBERSHIP AND OFFICERS OF APPEALS BOARD

Section 1. Membership of the Board of Appeals shall be in accordance with the Administrative Ordinance of the Town of Bethel.

A Board vacancy may occur as a result of one of the following conditions:

- a. Absences - Three (3) consecutive unexcused absences by a Board member at regularly scheduled meetings shall constitute cause for the Board of Appeals to recommend removal by the Selectboard.
- b. Resignation - When a Board member proposes to resign, he/she shall give written notice of his/her intent with an effective date to the Selectboard.
- c. Expiration of term.

In the event of a vacancy caused by either the removal of a Board member by the Selectboard or the resignation of a Board member, the Selectboard shall appoint an individual to fill the vacancy for the duration of the vacancy's unexpired term.

Section 2. Officers

- a. The Board of Appeals officers shall consist of the Chairman and Vice-Chairman. The Chairman and Vice-Chairman shall be nominated and elected from the membership of the Board.
- b. The election of officers shall be held at the beginning of the first meeting in the new calendar year.
- c. The officers shall each be elected with no less than three (3) affirmative votes of Board members.
- d. The officers shall be elected to serve one (1) year or until their successors are elected. Their term shall begin upon election.
- e. The Board of Appeals shall have the authority to establish committees on an as-needed basis.
- f. The duties of the officers shall be as follows:
 1. The Chairman shall preside at all meetings and hearings of Board of Appeals and shall be eligible to vote on all matters. The Chairman has the authority to appoint members to committees of the Board of Appeals, to call all work sessions, and to set the agenda.
 2. The Vice-Chairman shall preside at all meetings of the Board of Appeals in the absence of the Chairman and shall possess the powers and perform the duties of the Chairman in the Chairman's absence.
 3. Upon the vacancy of either the Chairman or the Vice-Chairman, a special election shall be held by the Board of Appeals to fill such vacancy for the remainder of the term.
 4. Upon the absence of both the Chairman and Vice-Chairman at any given meeting, the Board of Appeals shall, by vote, appoint an Acting Chairman effective for the duration of the meeting.

ARTICLE IV ADMINISTRATIVE AND PROFESSIONAL SUPPORT

Section 1. The Board of Appeals' administrative support shall be defined in the annual municipal budget of the Town of Bethel. This support shall include, but not be limited to, support of the Planning Assistant, the Code Enforcement Officer (CEO), the Town Manager, legal counsel, and supplies.

Section 2. The Planning Assistant or designee shall be responsible for the minutes and records of the Board, agendas of its meetings, notice of the meetings and hearings, scheduling of facilities, correspondence of the Board and other duties as required by the Board of Appeals, but subject to the approval of the Town Manager. The Planning Assistant shall keep a record of all resolutions, votes, transactions, correspondence, findings and conclusions of the Board. All records shall be deemed public and may be inspected at the Town Offices during normal business hours.

Section 3. The retention of legal counsel and other professional assistance shall be coordinated by the Chairman and/or designees of the Chairman in conjunction with the Town Manager.

Section 4. Training and Mentoring - Board of Appeals members shall be strongly encouraged to participate in periodic training designed to impart information regarding State rules and local code. New members shall be mentored in terms of Board of Appeals procedures as delineated in these Rules of Procedure.

ARTICLE V CONDUCT OF MEETINGS

Section 1. Board meetings may take the following forms:

- a. Meetings
- b. Workshops
- c. Site walks
- d. Executive sessions

Section 2. The Board of Appeals shall hold meetings as needed. The meeting dates will be scheduled at the discretion of the Chairman based on the time frames established in the code. Special meetings may be called by the Chairman or by three (3) or more of the members and public notice shall be given in accordance with applicable statutes.

Section 3. Meetings shall be open to the public, except when the Board of Appeals is in executive session.

Section 4. Ex parte communication - Ex parte communication among Board members is prohibited. Examples of typical practices which violate the "Right to Know Law" (1 M.R.S.A § 401 et seq.) shall be avoided by Board members:

- a. Polling Board members by telephone to vote on or discuss an appeal, application, or variance request;
- b. Taking an application or other appeals or variance-related documentation house to house to have it approved or leaving it at the Town Office for Board members to approve and sign;
- c. Chance meetings of Board members at which those members discuss an appeal or variance request;
- d. Making decisions in a "closed door" meeting or excluding the public when not authorized by law;
- e. Board members conducting discussions about Board business or making discussions by e-mail.

Section 5. No official business may be conducted without a quorum present. A quorum shall consist of three (3) members. The determination of a quorum for any appeal or variance request shall not include any member who cannot participate due to a conflict of interest.

Section 6. All members present at any meeting shall vote either in the affirmative or negative on all matters brought to a vote, unless a conflict of interest exists as defined by Section 8 of this Article. Members seeking to abstain from a vote must state the reason for abstention and explain the conflict of interest.

Section 7. The consideration of each appeal or variance request, by the Board, shall be done in the context of a meeting, which includes a hearing. Conduct of meetings is further described in ARTICLE VIII of these Rules.

Section 8. Conflict of Interest - A Board member shall abstain from the discussion and voting on an appeal or variance, if a conflict of interest is found to exist by the Board of Appeals. Any question of whether a member should abstain from discussion and the vote on a particular appeal, variance or other matter before the Board shall be by a majority vote of the members, excluding the member who is being challenged. The Board member shall make full disclosure for the record of his/her interest prior to any action being taken by the Board of Appeals. If a Board member is required to abstain, he/she has the right to participate as a member of the public.

“Conflict of interest,” meaning direct or indirect pecuniary (financial) interest in the appeal or variance request exists when the Board member is one or more of the following:

- a. The appellant or applicant requesting an appeal or variance;
- b. Abutter;
- c. An officer, director, partner, associate, employee or stockholder of a private business or other economic entity that has an interest in the issue under appeal or variance request and owns directly or indirectly at least 10% (ten percent) of the stock of the private business or corporation, or owns at least 10% (ten percent) interest in the business or other economic entity that has an interest in the issue under appeal or variance request;
- d. Immediate family by blood, marriage or adoption (mother, father, husband, wife, son, daughter, grandparent, grandchild, father-in-law, mother-in-law, brother, or sister);
- e. Is placed in a situation of temptation to serve his/her own direct or indirect personal pecuniary interest which shall include pecuniary benefit to any member of the person’s immediate family to his/her employer or the employer of any member of the person’s immediate family.

Section 9. All comments addressed to the Board shall be made through the Chairman.

Section 10. All actions of the Board of Appeals shall be determined by a vote. A majority vote of the quorum present is needed to pass any motion. When a motion results in a tie vote, the motion fails. A motion to reconsider any item of business shall be made at the same meeting or within 21 days of the date the motion was made , but not afterwards. Once a motion to reconsider has been decided upon, the item shall not be reconsidered again. No motion to reconsider a vote passed at a previous meeting shall be in order for reconsideration at the next duly called meeting unless an item to that effect is contained on the agenda for such next meeting or unless three (3) of the Board members consent to such reconsideration.

Section 11. All decisions must be made in accordance with the applicable provisions in the Town Code and all applicable laws.

- Section 12. The Board shall make a record of all meetings where official business is conducted by an appropriate means. Any individual or organization, upon written request to the Planning Assistant, may obtain a copy of the record from the municipal office upon prepayment of the cost of transcription, reproduction, and postage.
- Section 13. Workshops
- a. The Chairman may call workshops for the purpose of conducting work relating to the Board's activities.
 - b. The general public shall be barred from addressing the Board unless a majority of the Board members permits the public to speak.
 - c. All workshops are open to the public.
- Section 14. Upon an affirmative vote of three (3) or more members present and voting, a Site Walk may be conducted. All site walks are open to the public. The general public shall be barred from addressing the Board unless a majority of the members permits the public to speak.
- Section 15. The Board, upon a vote of at least three-fifths (3/5) of the members present and voting, may call for an executive session in accordance with Title 1 Chapter 13, M.R.S.A. §405.
- Section 16. The order of business shall be in accordance with the established agenda as stated in ARTICLE VI, Section 1.

ARTICLE VI APPEALS/VARIANCE REQUEST PROCESS AND DEVELOPMENT OF AGENDA

- Section 1. Meeting agendas shall be organized in the following format:
1. Call to order
 2. Opening Statement - The Chairman shall open the meeting by describing, in general, the purpose of the meeting and the general procedure governing its conduct.
 3. Declaration of a Quorum - A roll call with recording of members present and absent and others at the meeting shall be conducted.
 4. Minutes - The Chairman will request approval of the minutes of the previous meeting(s).
 5. Communications - The Board will review all communication. Communications will include, but not be limited to the following non-voting matters: comments and correspondence from the public, Town agencies, and Board administration. In order for a communication to be placed on the agenda, the request must be made in writing seven (7) days prior to the Board meeting. Other communication items not appearing on the printed agenda may be placed on the agenda and discussed with the unanimous consent of the Board.

6. Action on Appeals and Variance Requests
 - A. Old Business - The Board will continue the review of appeals or variance requests tabled at prior meetings, any motions to reconsider actions of the previous meeting, and adoption of findings of fact. Appeals or variance requests whose time limit has expired, per applicable provisions in the Town Code, shall be removed from the agenda by formal action of the Board.
 - B. New Business - The Board will review all new appeals or variance requests in accordance with applicable provisions of the Town Code and State statutes.
7. Other Business - This category shall include non-appeal items which require formal action.
8. Announcements
9. Adjournment

Section 2. Substantive business of the Board of Appeals shall not be discussed after 9:00 p.m. This rule may be waived by a majority vote of the members present.

Section 3. Requests for an appeal or variance must be made in accordance with the applicable provisions of the Town Code. Upon receipt and review of a request for an appeal or variance, the Planning Assistant at the Town Office, will contact the Board of Appeals Chairman, who will set a meeting date for the Board in accordance with the time frames specified in applicable provision of the Code. New appeals or variance requests will be placed on the agenda as an item under new business. The appellant (or party requesting a variance) shall be duly notified of the date, time and place of the meeting through the submission of the meeting agenda.

Section 4. The appellant (or party requesting a variance) or a designee must attend the meeting. The Board may choose to recognize any member of the Town's staff as a designee. If the property owner is not the appellant (or party requesting a variance) for any given appeal or variance request, the appellant or his/her designee must have a letter from the property owner, addressed to the Board, stating that the appellant/designee is authorized to represent the owner for the purpose of the appeal or request for variance.

ARTICLE VII PROCEDURES TO GIVE NOTICE TO PUBLIC AND ABUTTERS

Section 1. Public notification - Meeting agendas shall be posted at the Town Office prior to the meeting, and made available and distributed to the *Bethel Citizen* and the *Lewiston Sun Journal*.

Section 2. Abutter notification - Notification to abutters shall be made in accordance with the applicable provisions of the Town Code.

ARTICLE VIII CONSIDERATION OF APPEALS OR VARIANCE REQUESTS

- Section 1. Consideration of Appeals - Upon review of the record and determination that the basis for appeal is consistent with the applicable provisions of the Town Code, the appeal shall be considered by the Board.
- a. The consideration of all appeals or variance requests by the Board shall be done in the context of a meeting, including a hearing portion, which is the designated time for public comment. ~~as described in this article.~~ All participation by non-Board members must be done in the context of a hearing unless special permission to speak is granted by the Chairman.
 - b. An opening statement shall be made by the Chairman, and identification of conflict of interest (if any), shall occur.
 - c. The Chairman shall have authority to:
 1. Rule upon issues of evidence;
 2. Regulate the course of the meeting;
 3. Rule upon issues of procedure; and
 4. Take such other actions as may be ordered by the Board of Appeals or that are necessary for the efficient and orderly conduct of the meeting consistent with these rules and applicable statutes.
 - d. Witnesses - Witnesses shall be required to state, for the record, their name, residence address, business address, business or professional affiliation, the nature of their interest in the appeal or variance request, and whom they represent. Witnesses may provide oral argument related to the appeal in accordance with the applicable provisions of the Town Code.
 - e. Continuances - All meetings conducted pursuant to these rules may be continued for reasonable cause. Continuances may be granted at the request of any person participating in such meeting if it is determined that a continuance is necessary. All orders for continuances shall specify the time and place at which such meeting shall be reconvened.
 - f. Regulation of certain devices - The placement and use of television cameras, still cameras, motion picture cameras or microphones at Board of Appeals meetings, for the purpose of recording the proceedings thereof may be regulated by the Chairman so as to avoid interference with the orderly conduct of the meeting
 - g. Evidence
 1. General - Evidence which is relevant and material to the subject matter of the appeal of a type commonly relied upon by reasonably prudent individuals in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.
 2. Official Notice - The Board of Appeals may, at any time take notice of judicially cognizable fact, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within the specialized knowledge of the Board of Appeals.
 3. Documentary and Real Evidence - All documents, material and objects offered as evidences shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The Board of Appeals or the Chairman may require, after prior oral or written reasonable notice, that any party

4. Objections - All objections to rulings of the Chairman regarding evidence or procedure shall be timely made during the course of the hearing. If after the close of the hearing and during its deliberations the Board of Appeals determines that any ruling of the Chairman was in error, it may reopen the hearing or take such other action as it deems appropriate to correct such error.
- h. Argument, Questions, Rebuttal and Submissions
1. Appellant - The appellant shall be given the opportunity to present his/her case without interruption and may introduce documentary, photographic and real evidence in support of the appeal. The appellant may offer oral argument.
 2. Interested parties - The Board and interested parties may ask questions through the Chairman. Interested parties are those persons who request to participate as a witness, offer evidence and/or participate in oral cross-examination. Parties may be required 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. Municipal officials and other governmental agencies may offer oral argument at this time. All interested parties shall be given the opportunity to refute or rebut statements throughout the hearing at the discretion of the Chairman.
 3. The Chairman may refuse to permit irrelevant, immaterial or repetitious questions or other questions which do not advance or serve the purpose of the hearing and shall state the basis for such refusal on the record when requested to do so by the party asking the questions.
 4. The Chairman may require that such questioning be conducted at the conclusion of the statements of each category of witness rather than at the conclusion of the statement of each witness. The Chairman may impose reasonable limitations on the number of witnesses to be heard and on the nature and length of their statements and questioning.

Section 2. Consideration of Variance Requests - Upon review of the request for variance and determination that the basis for variance request is consistent with the appropriate provisions of the Town Code, the variance request shall be considered by the Board. The Board shall hold a variance hearing and follow the processes outlined in the applicable provisions of the Town Code.

Section 3. Deliberation on Appeals or Variance Request - Upon declaring the appeals or variance hearing closed, the Board of Appeals shall deliberate, in a non-hearing format, on the appeal or variance request. During this deliberation, the Board reserves the right to call interested parties for further evidence, if required. The general public

Section 4. Rulings on Appeals or Variance Request - Upon closing the deliberation period, the Board may rule on the appeal or the variance request in accordance with the applicable provisions of the Town Code.

ARTICLE IX LEGAL EFFECT OF RULES OF PROCEDURE

Nothing in these Rules of Procedure shall be deemed to modify or supplant any provision of any ordinance or statute providing for the Board of Appeals; and the provision of any such ordinance or statute shall remain in full force and effect and control these Rules of Procedure if they should conflict.