

**TOWN OF HAMPDEN, MAINE
BOARD OF APPEALS ORDINANCE**

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CERTIFIED BY: 
Paula A. Scott, Town Clerk

Town Clerk
Title Affix Seal

**BOARD OF APPEALS ORDINANCE
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**TOWN OF HAMPDEN, MAINE
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**ARTICLE 1
ESTABLISHMENT AND ORGANIZATION**

1.1 Composition of the Board of Appeals. A Board of Appeals is hereby established which shall consist of five (5) members and one (1) alternate. (*Amended 10/15/2018*) The term of office of all members is three (3) years, serving staggered 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 Town Council. 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 Town Council for cause upon written charges and after hearing. The Board of Appeals shall elect a chairperson and secretary from its own membership.

1.2 Present Board Re-Established. The present Zoning Board of Appeals for the Town of Hampden as now constituted, shall constitute the Board of Appeals under this ordinance, and each member thereof shall serve the remainder of his or her present term.

**ARTICLE 2
JURISDICTION**

2.1 Jurisdiction of the Board of Appeals. The Board of Appeals is authorized to hear appeals from decisions made under the following Codes and Ordinances of the Town of Hampden, as the same may be amended from time to time. All appeals and variance requests shall be in accordance with the applicable provisions of the subject code or ordinance, including any provisions thereof specifying the jurisdiction of the Board.

1. Maine Uniform Building and Energy Code
2. Fire Prevention Code.
3. Floodplain Management Ordinance.
4. Historic Preservation Ordinance.
5. Life Safety Code Ordinance.
6. Mobile Home Park Ordinance.
7. Shoreland Zoning Ordinance
8. Special Amusement Ordinance.
9. Zoning Ordinance.
10. Any other State or Locally adopted code, ordinance or standard that references appeals, interpretation, or review by the Municipal Board of Appeals.

2.2 Enforcement Decisions. The Board of Appeals' authority does not include appeals from enforcement decisions made by the Code Enforcement Officer, Building Official, Fire Inspector, or other enforcement official. The term *enforcement decisions* refer to violation determinations and enforcement actions taken by the enforcement official.

**ARTICLE 3
POWERS AND DUTIES OF THE BOARD OF APPEALS**

3.1 Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers as provided for in the subject code or ordinance:

3.1.1. *De novo Review.* To hear and decide, on a de novo basis, an administrative appeal alleging that there is an error in any order, requirement, decision, or determination made in writing by, or failure to act by, the Code Enforcement Officer, Building Official, Fire Inspector, or other official in regard to an application for a permit under the subject code or ordinance.

3.1.2. *Appellate Review.* If authorized by the subject code or ordinance, to hear and decide on an appellate basis, an administrative appeal alleging that there is an error in any order, requirement, decision, or determination made by, or a failure to act by, the reviewing authority body in regard to an application for a permit, license, or approval under the subject code or ordinance.

3.1.3 *Standard of Review.* When acting in a de novo capacity, the Board of Appeals shall hear and decide the administrative appeal afresh, undertake its own independent analysis of the evidence presented and the law, research its own decision, and make findings and conclusions in support of its decision. When acting in an appellate capacity, the Board of Appeals shall limit its review to the record of the proceedings before the reviewing authority body, and may reverse the decision of that body only upon a finding that the decision was contrary to specific provisions of the subject code or ordinance or was not supported by substantial evidence in the record. The Board of Appeals shall not substitute its judgment for that of the reviewing authority body. If the Board reverses the decision of the reviewing authority body, it shall remand the matter to that body for further consideration.

3.1.4. *Variiances.* To authorize variances in specific cases but only within the limitations set forth in the subject code or ordinance of the Town of Hampden.

3.1.5. *Interpretation of Ordinances.* As provided in the subject code or ordinance, the Board of Appeals shall have the authority to hear appeals to interpret the provisions of a code or ordinance called into question. The Board of Appeals shall interpret the provision called into question based on any of the following considerations: the context in which the word is used in the subject code or ordinance; the legislative intent implicit in the use of the word; definitions given by experts qualified in the field under consideration; other evidence which is germane to the issue but does not involve the specific proposal at hand; and ordinary usage of the word.

3.1.6. *Adoption of Rules.* The Board of Appeals shall have the authority to adopt rules of procedure to govern the conduct of its business as long as the rules are consistent with this ordinance and any other applicable codes or ordinances, and with state laws.

ARTICLE 4
APPEAL PROCEDURE

4.1. Making an Appeal

4.1.1. Appeals to the Board of 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.

4.1.2. Such an appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For an appellate appeal, the application, record of the reviewing authority body, decision of the body, and any written arguments on the appeal shall be filed by applicant at least 7 days before the hearing. In addition, for a de novo appeal, all written materials and exhibits in support of the appeal must be filed by the applicant at least 7 days before the hearing. Any opposing parties may file a response to such materials at least 3 days before the hearing. No

exhibits or other written materials that were not filed within these time limits shall be admitted at the hearing except by leave of the Chair for good cause shown.

4.1.3. The Board of Appeals shall notify the town official, or reviewing authority body, and applicant of the appeal.

4.1.4. The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) 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 seven (7) days prior to the hearing. In addition, at least seven (7) days prior to the hearing, notice of the appeal shall be sent by mail to the owners of properties that abut the property for which the application or appeal is made. Failure of an abutter to receive notice shall not invalidate the proceedings. A fee shall be paid for application of all appeals, variances and sewer reviews consistent with the provisions of the Town of Hampden Fees Ordinance. The cost of the appeal shall be borne by the person(s) filing the appeal.

4.2. Hearings

4.2.1. For an appellate appeal, the Board may not accept new evidence on the subject matter of the appeal, but may receive oral or written argument concerning the merits of the appeal.

4.2.2. For de novo appeals, 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. Unsubstantiated hearsay and third party hearsay shall not be given the same weight as documented evidence.

4.2.3. 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.

4.2.4. At any hearing a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

4.2.5. The town official, or representative of the reviewing authority body, whose action or non-action is under appeal, shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material deemed appropriate for an understanding of the appeal.

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

4.3. Decisions of the Board of Appeals

4.3.1. A majority of the members of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.

4.3.2. 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 town official or reviewing authority body, or to decide in favor of the applicant on any matter on which it is required to act under this Ordinance, or to effect any variation in the application of this Ordinance.

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

4.3.4. The Board shall decide all appeals within thirty-five (35) days after hearing, and shall issue a written decision on all appeals.

4.3.5. 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 appellant, or appellant's representative or agent, and the town official or reviewing authority body whose action or non-action was the subject matter of the appeal within seven (7) days of the decision date.

4.3.6. Upon notification of the granting of an appeal or variance or the interpretation of an ordinance by the Board of Appeals, the town official or reviewing authority body shall promptly act in a manner consistent with the Board's decision, unless an appeal is taken therefrom to Superior Court.

(Note that if the enforcement officer, board or council has denied an application based on multiple non-compliance issues reversal of a solitary decision might not have the effect of reversing the overall basis of the denial. For example if a building permit application failed to meet building code and zoning standards relief from one standard would not result in an approval of the project).

4.3.7. A copy of all variances effecting shoreland zoning granted by the Board of Appeals shall be submitted to the Dept. of Environmental Protection within fourteen (14) days of the decision.

4.4. Appeal to Superior Court - Any aggrieved party who participated as a party during the proceedings before the Board of Appeals, and has standing to do so, may take an appeal to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure within forty-five (45) days from the date of any decision of the Board of Appeals.

ARTICLE 5
CONFLICT OF INTEREST

5.1. Voting Procedure for Determination of Conflict of Interest. 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.

5.2. Conflict of Interest. 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 (e.g., grandfather, father, wife, son, grandson) or to the member's employer or the employer of any member of the person's immediate family or any other prejudice that would prevent a Board member from rendering an unfair and/or impartial decision.

ARTICLE 6
RECONSIDERATION

6.1. Reconsideration of Decisions. The Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to reconsider must be filed within ten (10) days of the decision to be reconsidered. A vote to reconsider and the action taken on the reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony. Notwithstanding Section 4.4,

appeal of a reconsidered decision must be made within fifteen (15) days after the decision on reconsideration.

ARTICLE 7
STAY OF PROCEEDINGS

7.1. Stay of Proceedings. An appeal stays all legal proceedings in 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.

ARTICLE 8
NEW APPEALS

8.1 New Appeals. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be submitted to, or entertained by, the Board until one (1) year has elapsed from the date of the decision.

ARTICLE 9
EFFECTIVE DATE

9.1. Effective Date. The effective date of this Ordinance shall be 30 days from the date of adoption by the Town Council.