

Town of Belgrade

Board of Appeals

Jan. 26, 2022 / 6:30 p.m.

Belgrade Town Office

990 Augusta Road

This meeting will be conducted in person.

The public may also view the meeting and participate online at

<https://us02web.zoom.us/j/85277661600>

A G E N D A

Call to Order

Roll call

1. OLD BUSINESS

A. Approval of **Aug. 25, 2021, minutes.**

2. NEW BUSINESS

A. Review of Town Attorney's recommendations regarding **Board of Appeals Ordinance** amendments.

B. Consideration of date for **next Appeals Board meeting.**

3. ADJOURN

**BOARD OF APPEALS ORDINANCE
FOR THE TOWN OF BELGRADE**
~~Approved by the Board of Appeals Nov. 28, 2018~~

I. GENERAL PROVISIONS:

- A. Business of the Board of Appeals (hereafter Board) shall be conducted in accordance with Maine statutes, Town ordinances, and the procedures adopted by the Board.
- B. 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.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the Belgrade Comprehensive Plan.
- D. The Board is authorized to hear only administrative and variance appeals from decisions made under any Town of Belgrade Ordinance which expressly designates the Board of Appeals to hear such an appeal.

II. APPOINTMENTS:

- A. The Board shall consist of five (5) regular members and two (2) alternate members appointed by the Board of ~~Selectmen~~ Selectpersons of the Town of Belgrade for terms of three years. These terms shall be staggered so as to preserve continuity on the Board and shall expire on the first ~~B~~board meeting following the annual town meeting.
- B. Neither a ~~Selectperson~~ man nor his/her spouse, nor a Planning Board or Board of Appeals member or his/her spouse may be a member or an alternate member of the Board.
- C. Any member of the Board may be removed, for cause, by the ~~Selectmen~~ Board of Selectpersons before expiration of his/her 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 him/her. The term, "for cause" shall include but not be limited to failure to attend three (3) consecutive Board meetings without sufficient justification, voting when the member has a conflict of interest, or for violation of Maine statutes.
- D. When there is a permanent vacancy of either a regular or ~~associate-alternate~~ member, the ~~Chairperson~~ person shall immediately notify the Board of ~~Selectmen~~ Selectpersons. The ~~Board of Selectmen~~ Board of Selectpersons shall appoint a person to serve for the unexpired term.

III. MEMBER ROLES AND RESPONSIBILITIES:

- A. REGULAR MEMBER. A regular member of the Board shall have all the rights and privileges of membership and be a fully vested voting member of the Board of Appeals. A regular member who is absent from a particular meeting, absent from a hearing, or disqualified to participate in a particular matter may be replaced by the Chairperson for that meeting or for the determination of that matter by an alternate member. When so replaced, that regular member has no right to make motions, second them, or vote and shall make comments or ask questions only to the extent that members of the public are allowed to do so.
- B. ALTERNATE MEMBER. An alternate member shall have all the rights and privileges of regular members except the right to participate in hearings or decisions of the Board unless designated by the Chairperson to serve in place of a regular member of the Board for that hearing or matter. An alternate member may otherwise participate in any and all meetings of the Board, but shall have no right to make motions, second them, or vote. An alternate member shall be eligible to be elected Secretary of the Board of Appeals.

IV. OFFICERS AND DUTIES:

- A. The officers of the Board shall consist of a Chairperson and Secretary, who shall be elected annually by a majority of the Board. Election of the officers shall take place during the first meeting following the annual town meeting.
- B. CHAIRPERSON. The Chairperson shall perform all duties required by law 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 designate which alternate member will serve in the place of a member who is absent or recused.
- C. SECRETARY. The Secretary shall keep minutes of all Board proceedings, showing the vote of each member upon every question. The Secretary shall also arrange proper and legal notice of hearings and attend to other duties as are normally carried out by a secretary. The Secretary shall keep a record of all hearings including: subject of the hearing, identification of each participant, any agreements made between parties and the Board regarding procedures, the testimony presented, findings of fact and conclusions, the decision of the Board, and the date of issuance of the decision. All records are public, shall be filed in the municipal clerk's office, and may be inspected at reasonable times.

V. POWERS AND DUTIES:

The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:

- A. 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 the ordinances listed in section V, 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. If an ordinance establishes an appellate review process for the Board, instead of *de novo*, then the Board shall limit its review on appeal to the record established by the Board or official whose decision is the subject of the appeal and to the arguments of the parties. The Board may not accept new evidence as part of an appellate review.

Commented [PS1]: The Town may want to consider having administrative appeals from decisions of the Planning Board be heard on an appellate, instead of *de novo*. Appeals from CEO decisions should continue to be on a *de novo* basis, particularly in light of a recent Law Court opinion strongly encouraging such a standard of review from CEO decisions.

B. **Undue Hardship Variance.** Except as provided in sub-sections C and D below, the Board may grant a variance only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his/her property would cause undue hardship. The words “undue hardship” as used in this subsection mean:

1. The land in question cannot yield a reasonable return unless a variance is granted;
2. The need for a variance is due to the unique circumstances of the property and not the general conditions in the neighborhood;
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 prior owner.

C. **Disability Variance:** 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 pursuant to 30-A M.R.S. § 4353(4-A). 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. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. § 4553-A. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

D. **Setback Variance:** The Board may grant a setback variance to a property owner of a single family dwelling where the Board finds that strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his/her property would cause undue hardship as defined in M.R.S.A. 30-A § 4553(4-B):

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or prior owner;
4. The granting of the variance will not substantially reduce or impair the use of the abutting property; and
5. The granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

6. Additional limitations upon this variance request are:
 1. The dwelling for which the variance is sought must be the primary year-round residence of the applicant.
 2. The variance may not exceed 20% of the required setback.
 3. The variance shall not allow a reduction in the shoreline setback, and
 4. The variance may not cause the area of the dwelling to exceed the maximum permissible lot coverage.

VI. MEETINGS:

- A. The regular meeting of the Board shall be held once every month on a date decided by the Board of Appeals at its annual organizational meeting or, as necessary, as determined by the Chairperson, provided there is business to conduct.
- B. ~~The annual organizational meeting of the Board shall be the first regular meeting following the annual Town Meeting. At the annual meeting, among other business, the Board shall elect the officers from its members. Those officers are a Chairperson and the Secretary.~~BLANK
- C. Special meetings of the Board may be called by the Chairperson. At least forty-eight (48) hours written notice of the time, place, and business of the meeting shall be given to each member of the Board of Appeals, Board of Selectpersons, Planning Board, as well as the Town Manager and Code Enforcement Officer. Public notice shall also be made using contemporary means and technology.
- D. The Chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three (3) members of the Board whose request specifies the matters to be considered at such special meeting.
- E. Subject to the discretion of the Chairperson, the order of business at regular meetings shall be as follows: roll call; reading and approval of the minutes of the preceding meeting; action on held cases; public hearing (when scheduled); other business; adjournment.
- F. All meetings of the Board shall be open to the public except executive sessions. No votes may be taken by the Board in executive session. The Board shall only hold executive sessions for purposes allowed by law.

Commented [PS2]: I'm not sure this provision is needed since there is no reason to meet unless there is an application.

VII. VOTING:

- A. A quorum shall consist of three (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.

- C. All matters shall be decided either by a show of hands, or by polling voting members for a “yes,” “no,” or “abstain” voice vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the members present and voting.
- D. A tie vote shall be considered a rejection of the motion under consideration.
- E. The term “conflict of interest” shall be construed to identify situations in which a member must recuse himself/herself. For example, having 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 his/her employer or the employer of any member of the person’s immediate family; situations where a member may have a current or prior relationship with the appellant or his/her family; and situations where a member may have information that could affect his/her objectivity. A Board member who owns or has an interest in a property abutting a property subject to an appeal shall be deemed to have a conflict of interest.
- F. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter. A recused member shall leave his/her seat at the table until the matter relating to the conflict of interest has been concluded.
- G. 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.
- H. The Chairperson shall appoint an alternate member to act for a regular member who is disqualified from voting or unable to attend the hearing. The alternate member will act for the regular member until the case is decided.

VIII. APPEAL PROCEDURE:

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section ~~VI-V~~ must file such application for appeal in writing within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the Town Office to the attention of the Chairperson, ~~Belgrade~~ Board of Appeals, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the Town Office shall promptly notify the Board Chairperson.
- B. All costs of appeal, including publication and other notices, and any and all recording fees shall be borne by the petitioner.

IX. HEARINGS:

- A. The Board shall schedule a public hearing on all appeals applications within forty-five (45) days of the Board’s determination that the application is complete.

Commented [PS3]: Is the intent for the Board to have an initial meeting only to review an application for completeness, and then schedule a public hearing? You could instead simply require a public hearing within 45 days of receipt of an application and have the completeness review at the same meeting for efficiency purposes, particularly since the next section requires a 30 day notice requirement for abutters (thus potentially pushing out a final hearing well beyond 75 days from receipt of application).

B. The Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published once in a newspaper of general circulation in the Town, the date of the publication to be at least ten (10) days prior to the Hearing. The Board shall also cause notice of the hearing to be given to the Selectpersonseple, the Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least thirty (30) days prior to the date of the hearing.

Commented [PS4]: You may want to change this to 7 days to provide consistency with the subdivision ordinance publication requirement.

C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.

D. The order of business at a public hearing shall be as follows:

1. The Chairperson calls the hearing to order, members then introduce themselves and disclose any potential conflicts of interest in the matters pending, determines a quorum exists. The Chairperson then gives a statement of the case, and provides all correspondence and reports received regarding the case.
2. ~~The Board determines whether it has jurisdiction over the appeal, and whether the applicant has the right to appear ("standing") before the Board, and which individuals attending the hearing are "interested parties." They would include but are not limited to abutting property owners and those who might be adversely affected by the Board's decision.~~ Parties 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. ~~Municipal officers~~ The Board of Selectpersons, the Planning Board, the Code Enforcement Officer shall automatically be made parties to the proceeding.
3. 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 Chairperson.
4. Persons not attending the meeting may submit written statements provided the documents are signed and submitted prior to the conclusion of the hearing.
5. The appellant is given the opportunity to present his or her case without interruption.
6. The Board ~~and interested parties~~ may ask questions of the appellant through the Chairperson, or directly, with the permission of the Chairperson.
7. ~~The interested parties~~ The permit holder, in the case of an administrative appeal filed by an interested party, is ~~are~~ given the opportunity to present their case. The Board may call its own witnesses, including but not limited to the Code Enforcement Officer.

Commented [PS5]: Applicants must have standing to apply for a variance or file an administrative appeal. Variances must be filed by a person with right, title, or interest in the property, and administrative appeals can be filed by the applicant who was denied by the CEO/PB or by aggrieved parties, which have been defined by the Law Court as persons with particularized injury (typically abutters). Interested parties would not otherwise be a "party" to a variance appeal but could participate through the public hearing portion.

8. The appellant may ask questions of the interested parties and Board witnesses through the Chairperson, or directly, with the permission of the Chairperson.
9. All parties are given the opportunity to refute or rebut statements made throughout the hearing. Rebuttal testimony will be limited to those matters which were the subject of direct testimony, cross-examination and questioning. No new subject matter may be introduced by way of rebuttal.
10. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
11. The public hearing is closed after all parties have been heard. The Board may then enter into a work session for members only. The work session is open to the public; however, members of the public may not speak unless called upon by a Board member.
12. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time, and place of the continued hearing. Orders of continuance established in the course of a hearing shall be deemed adequate notice to the public and all interested parties.

E. The Board may waive any of the above rules if good cause is shown.

X. DECISIONS:

- A. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing.
- B. The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared, and all exhibits, together with all papers and requests filed in the proceedings, shall constitute the public record.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, and local ordinances, ~~policies specified in the Comprehensive Plan and by Findings of Fact by the Board~~ in each case.
- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. Notice of any decision shall be sent by certified or registered mail or hand delivered to the applicant, his/her representative or agent, the Planning Board, the Code Enforcement Officer, and the ~~Selectpeople-Board of Selectpersons~~ within seven (7) days of the decision. Any decisions affecting the Shoreland Zone shall be mailed or hand-delivered to the Department of Environmental

Protection within seven (7) days. Copies of written decisions of the Board shall be given to the Applicant, Planning Board, Code Enforcement Officer, and the ~~municipal officers~~ Board of Selectpersons.

- 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 each decision shall be entered in the official records and minutes of the Board.
- G. Variances granted must be recorded by certificate in the Kennebec County Registry of Deeds within thirty (30) days of final approval. (Variances not recorded within this time shall be invalid.) The certificate must be prepared in recordable form and provided to the applicant. It must indicate the name of the current property owner, identify the property by reference to last recorded owner, identify the property by reference to the last recorded deed or deeds of ownership in its chain of title, and indicate the fact that a variance including any conditions on the variance, has been granted and the date of the granting.
- H. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision; however, the Board may extend this time an additional ninety (90) days.

XI. RECONSIDERATION:

- A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A meeting to decide whether to reconsider shall be called by the Chairperson in accordance with Section VI of this ordinance. The Board may conduct additional hearings and receive additional evidence and testimony. A reconsideration vote must receive a majority of those members who voted on the original decision.
- B. Reconsideration should be for one of the following reasons:
 - 1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
 - 2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction, or the Board votes to accept new information for the hearing record that may have had a bearing on the outcome of the original decision.

XII. APPEAL TO SUPERIOR COURT:

- A. The decision of the Board of Appeals may be taken, within forty-five (45) days after the decision is rendered, by the party to the decision to Superior Court 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.~~

Commented [PS6]: While this is true, this is within the Court's discretion and does not depend on authorization in a local ordinance.

XIII. SEVERABILITY:

The invalidity of any section or provision of this ordinance shall not be held to invalidate any other section or provision within the ordinance.

XIV. AMENDING THE ORDINANCE:

- A. This ordinance may be amended by a majority vote of the legislative body present at any regular or special town meeting.
- B. Any proposed amendment to the ordinance shall be presented at a public hearing before the town meeting. The Board of ~~Selectmen~~ Selectpersons may hold a public hearing on the proposed amendments to the ordinance and report in writing its opinion on the desirability of the proposed change(s).
 - 1. If the vote on the amendment is by local referendum ballot, the ~~Selectmen~~ Selectpersons shall have a public hearing at least sixty (60) days prior to the Town Meeting. If the amendment is at an open assembly ~~T~~town ~~M~~meeting, a public hearing must be held within thirty (30) days of the duly authorized town meeting.
 - 2. Notice of any public hearing or amendment to this ordinance shall be given in a newspaper with local circulation at least five (5) days before the hearing.

Town of Belgrade
Board of Appeals Meeting
August 25, 2021

Members Present: Michial Heino – Chairman (2024), Dick Bourne (2022), David Bonar (2023); Norma Blazer (2023); Nicholas Alexander via Zoom (2022). Also present was Anthony Wilson, Town Manager.

Alternate Members Absent: Val Hudspath (2024)

With five board members present and a quorum having been established, Chairman Mike Heino called the meeting to order at 7:00 PM.

Approval of the Minutes

On motion duly made and seconded (Bonar/Bourne), the minutes of the meeting of May 26, 2021, were approved as submitted. (YES 4/NO 0/ABSTAIN Alexander)

Membership

Cory Alexander has resigned his position on the Board of Appeals. Nicholas Alexander was appointed by the Board of Selectpersons to fill Cory's seat for a term expiring on March 31, 2022. Nicholas has been sworn in and is participating in this meeting via Zoom.

Review of the Board of Appeals Ordinance

Members reviewed the Board of Appeals Ordinance (approved at Town Meeting on November 28, 2018). The Board of Appeals will recommend the following changes to the Belgrade Board of Selectpersons.

1. Change all occurrences of "Board of Selectmen" to "Board of Selectpersons" and all occurrences of "Selectmen" to "Selectpersons."
2. Section II. D. Change "regular or associate member" to "regular or alternate member" to maintain consistency throughout the document and to be consistent with other town ordinances.
3. Section VIII. A. The existing ordinance refers to "jurisdiction of the Board pursuant to Section VI." The reference should be to Section V – "jurisdiction of the Board pursuant to Section V."
4. Section VII. C. Correct the punctuation. "yes"no, or abstain" to "yes," "no," or "abstain" voice vote.

On motion duly made and seconded (Bonar/Bourne), the Board of Appeals recommends these changes be made to the ordinance and that the updated ordinance be presented to the town for a vote in March of 2022. Mr. Wilson will present a properly annotated document tracking the suggested changes to the Board of Selectpersons at their September meeting (YES 5/NO 0).

Shoreland Zoning News August 2021

The Board acknowledges receipt of a copy of the August 2021 issue of Shoreland Zoning News via Town Manager Anthony Wilson and George Seel of the Belgrade Planning Board. The publication contains an article written by Colin Clark that states the following: "State law requires municipalities to forward applications for variances from dimensional standards involving shoreland property to the Department of Environmental Protection at least 20 days prior to the local Board of Appeals taking action on the application." The article refers to Title 38 MRS, Section 438-A(6).

The Board of Appeals will meet next when there is business for the Board to consider and proper notice will be provided.

On motion duly made and seconded (Bonar/Blazer), the meeting was adjourned at 7:43 PM. (YES 5/NO 0).

This meeting was conducted at the Town Office and recorded on Zoom. A video recording is available at <https://youtu.be/1hsxvyA9zjY>. All votes were conducted by roll call.

Norma Blazer

Secretary