

**Board of Appeals Ordinance  
for the  
Town of Starks, Maine**

To Be Voted on: March 11, 2016

ENACTED: March 11, 2016 Date

EFFECTIVE: March 12, 2016 Date

CERTIFIED BY: J. Hebert Name

Jennifer A Zweig Hebert, Clerk Title



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## **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Ordinance, the Board of Appeals Ordinance for the Town of Starks, Maine, previously adopted on June 16, 2003 is hereby repealed, with the exception of those provisions that established and re-established the Town of Starks Board of Appeals.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. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and procedures set forth in this Ordinance.
- 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", if any, and grant the minimum relief to assure the goals and policies of the plan are preserved and substantial justice is done.
- E. To allow the Chairperson or designee to contact the Maine Municipal Association for any research and legal advice necessary for the Board's work.
- F. The Board must have a lockable file cabinet in a secure location at the Town Office.
- G. The Board must be allowed access to the fax and copier for necessary copies.
- H. The person 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. These terms shall be staggered to preserve continuity on the Board and shall expire on April 30th. The Chairperson shall designate an alternate to serve in place of the absent member.
- B. Neither a Selectman, Planning Board member, or Code Enforcement Officer, nor his or her spouse, may be a full or alternate member of the Board.
- C. Any member of the Board may be removed from the Board for cause, by the Selectmen 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 failure to attend 3 consecutive Board meetings or hearings without sufficient justifications, or voting when the member has a "conflict of interest or bias".

- D. 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.

### **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

(grandfather, wife, son, grandson, Domestic partners, e.g.) or to his 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 himself or herself from the case.

## V. Powers and Limitations

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

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. In all other instances this Ordinance shall be applicable.
3. Administrative Appeals. The Board may hear and decide administrative appeals where any aggrieved party affected by a decision, order, rule or failure to act alleges there is an error in procedure followed by either the Code Enforcement Officer or the Planning Board. The review 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.
4. Variance Appeals. The Board may hear and decide on requests for variances only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his 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. The regular meeting of the Board shall be held once every month or as necessary.
- B. The annual organizational meeting of the Board shall be the first regular meeting of the year.
- C. Special meetings of the Board may be called by the Chairperson. At least 7 days written notice of the time, place and business of the meeting shall be given each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
- D. 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.
- E. The order of business at regular meetings of the Board shall be as follows: 1) Roll call; 2) Reading and approval of the minutes of the preceding meeting; 3) Action on held cases; 4) Public hearing (when scheduled); 5) Other business; 6) Adjournment.
- F. 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.
- G. Deliberations may be conducted in executive session on the following matters and not others (as defined by 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 shall be entitled to 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 Procedure**

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V must file such application for appeal within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the 30 day requirement.
- B. The applicant shall file an application for appeal with Town Clerk during regular office hours.
- C. Applications for appeals shall include the following:
  - 1. An "Application Form for Appeals" completed by the applicant. (See Section XVI)
  - 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.
    - i. The application fee shall be in the amount of \$50.
    - ii. The Board of Selectmen may, from time to time establish the appropriate application fee following posting of the proposed schedule of fees and public hearing. These fees will take precedence over the fee established in the Ordinance in Section VIII.C.3.i.
- D. The Town Clerk shall transmit the application for appeal to the Board and the Code Enforcement Officer and/or Planning Board, as applicable.
- E. Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Chairperson of the Planning Board, as appropriate, shall transmit to the Board all of the papers constituting the record of the decision appealed from.
- F. The Chairperson of the Board of Appeals shall schedule a meeting of the Board to determine the completeness of the application, review the record of the decision appealed from, and set a date for the public hearing.

## 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 such hearing, the location of the building or lot, and the general nature of the questions involved, to be given to the person making the application and to be published in a newspaper of general circulation in the municipality, the date of publication to be at least 7 days prior to the hearing. 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 the Owners of property abutting that for which the appeal is taken at least 20 days prior to the date of hearing.
- 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 shall call the hearing to order.
  2. The Chairperson shall determine whether there is a quorum and appoints alternatives to voting authority as needed.
  3. The Chairperson shall give a statement of the case and reads all correspondence and reports received.
  4. The Board determines whether it has jurisdiction over the appeal.
  5. The Board decides whether the applicant has the right to appear before the Board.
  6. 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.
  7. The appellant is given the opportunity; to present his or her case without interruption.
  8. The Board and interested parties may ask questions of the appellant through the Chair.



9. 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.
  10. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
  11. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
  12. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued at a later date. All participants shall be notified of the date, time, and place of the continued hearing.
  13. Written testimony may be accepted by the Board for seven days after the close of the hearing.
- E. The Board may waive any of the above rules if good cause is shown.

## **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 final decision on any matter before the Board 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 said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan (if any) and by findings of fact by the Board in each case.
- D. The person filing the appeal has the burden of proof.
- F. 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 Board of Selectmen within 7 days of the Board's decision. Any decisions affecting the Shoreland Zone shall be mailed or hand-delivered to the Department of Environmental Protection within 7 days.
- G. 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.

- H. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit the use is not obtained by the applicant within 90 days from the date of the decision; however, the Board may extend this time to an additional 90 days.

## **XI. Reconsiderations**

- A. In accordance with 30-A M.R.S.A. 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 within 15 days after the decision on reconsideration.

## **XII. Appeal to Superior Court**

Any party may take an appeal, 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 shall take effect immediately upon adoption by the Town of Starks.

**Application Form for Appeals**

Town of Starks Board of Appeals, Starks Town Office, 57 Anson Road, Starks, ME 04911

Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Fee Submitted: \_\_\_\_\_

\_\_\_\_\_ Map/Lot# \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Appeal of What Board or Individual: \_\_\_\_\_

Appeal of What Ordinance: \_\_\_\_\_

Date of Written Decision You Are Appealing: \_\_\_\_\_

Reason for Appeal: Describe in detail the decision you are appealing, the facts surrounding this appeal, what you think is wrong about the decision you are appealing, and what action you want the Board of Appeals to take in this matter. If you are not the original applicant and you are appealing a Planning Board decision, please indicate if you participated in the Planning Board's proceedings. Also indicate how the Planning Board's decision will affect you and/or your property. You may attach additional page(s) and any other documentation supporting your appeal.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*The Board of Appeals may request additional information to assist in the review, but the burden of proof shall be on the applicant to present their case.*

I certify that the information contained in this application is true to the best of my knowledge and belief.

Applicant's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Received by Board of Appeals on (date): \_\_\_\_\_

Chairman, Board of Appeals (signature): \_\_\_\_\_

**CERTIFICATION:** We the Selectmen of the Town of Starks hereby Certify to the Clerk that the foregoing document is a document entitled "**BOARD OF APPEALS ORDINANCE FOR THE TOWN OF STARKS, MAINE**" and further certify it to be the subject of a town meeting referendum vote to take place on Friday, March 11, 2016 between the hours of noon and 8 p.m. at the Town of Starks Community Center, 57 Anson Road, Starks, Maine.

Date of Certification: 1/25/16

Paul B. Frederic

Selectman Paul Frederic

Joseph Hayden

Selectman Joseph Hayden

Ernest Hilton

Selectman Ernest Hilton

**ATTEST:** A true copy of an ordinance entitled "**BOARD OF APPEALS ORDINANCE FOR THE TOWN OF STARKS, MAINE**", as certified to me by the municipal officers of Starks.

Signature: Jennifer Zweig Hebert  
Jennifer Zweig Hebert, Town Clerk

Date: 1/26/16

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**CONSTABLE'S RETURN**

By virtue of a directive from the Board of Selectmen, I have notified and warned the inhabitants of the Town of Starks to assemble at the time and place and for the purpose therein named by the posting attested copies of the "**BOARD OF APPEALS ORDINANCE FOR THE TOWN OF STARKS, MAINE**" and notice of the Town Meeting in three conspicuous places within the said Town.

Date: 2/17/16

Signature: Jerry Brackett  
Posting Officer