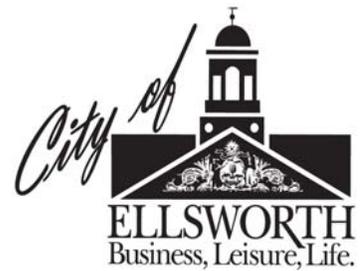


City of Ellsworth
Chapter 56
Unified Development ordinance

Article 13
Board of Appeals



ARTICLE 13 BOARD OF APPEALS

1300 ESTABLISHMENT AND ORGANIZATION

There shall be a Zoning Board of Appeals (Board) as provided by Title 30-A M.R.S.A. Sections 2691 and 4353. The Board shall consist of 5 members and one associate member.

The members shall be appointed by the City Council. The members shall be appointed for terms of 5 years each, such terms to be staggered so that the term of one member shall expire each year.

The associate member shall act in place of any member who may be unable to act due to conflict of interest, absence, physical incapacity, or any other reason. The City Council may dismiss a member of the Board for cause before that member's term expires.

1301 JURISDICTION

The Board shall have the following powers:

- A. Administrative Review.** To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or the Planning Board in the administration of this ordinance.
- B. Variance.** To authorize in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. In the Shoreland Zone, variance shall be applied per Chapter 56, Article 4. Shoreland Zoning Regulations section 404 Shoreland Zoning Appeals. In all other zones, a variance shall apply only to area, yard space, height, or setback requirements, and in no case shall a variance apply to the use of land or structures. A variance may be granted only if the Board finds that all of the following criteria are met:
 - i. That the land in question cannot yield a reasonable return unless a variance is granted;
 - ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
 - iii. That the granting of a variance will not alter the essential character of the neighborhood; and
 - iv. That the hardship is not the result of action taken by the applicant or a prior owner.

1302 POWER AND DUTIES

The Zoning Board of Appeals shall have the following powers:

- A.** To interpret provisions of the ordinance which are called into question in any matter before it;
- B.** To approve the issuance of a variance subject to conditions, where those conditions are directly related to the present or future use or division of the property;
- C.** To take and hear testimony, to swear witnesses and compel the presence of witnesses by process; and
- D.** To establish such procedures for hearings before it, as are not inconsistent with the procedures set forth in this ordinance and state law.

1303 GENERAL PROCEDURES

- A.** The Chairman shall be elected annually by the Zoning Board of Appeals from its membership. The Chairman shall call meetings as required, or when requested to do so by a majority of the members of the Board, by the City Council or by the Code Enforcement Officer. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board.
- B.** The secretary shall be elected annually by the Board from its membership. The secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the City clerk's office and may be inspected at reasonable times.
- C.** A quorum of the Board is necessary to conduct an official Board meeting; a quorum must consist of at least a majority of the Board's members.
- D.** 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 has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.

- E. The transcript of the testimony, if any, and exhibits, together with all papers and requests filed at the proceeding, constitutes the record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial of relief. Notice of any decision shall be mailed or hand-delivered to the petitioner, the Code Enforcement Officer or the Planning Board, as appropriate, and the City Council within seven days of the Board's decision.

1304 PROCEDURE FOR ADMINISTRATIVE REVIEW

The following procedures shall apply to appeals for Administrative Review conducted before the Zoning Board of Appeals:

- A. An appeal may be taken to the Board by an aggrieved person from any decision of the Code Enforcement Officer or the Planning Board, as appropriate within 30 days of the date of the decision appealed from. The Board may extend this time period only upon a showing by the person seeking an appeal that there was good cause for the failure to appeal within 30 days of the decision.
- B. An appeal shall be made by filing a written notice of appeal with the Board, which includes:
 - i. A sketch drawn to scale showing lot lines, the locations of existing buildings, and other physical features pertinent to the relief requested.
 - ii. A concise statement of the relief requested and why it should be granted.
- C. Upon being notified of an appeal, the Code Enforcement Officer or the Planning Board, as appropriate, shall transmit all papers comprising the record of the decision appealed from to the Board.
- D. The Board shall hold a public hearing on the appeal within 30 days of its receipt of an appeal request. At least 7 days prior to the date of hearing on such appeal, the Board shall cause to be published in one issue of a newspaper of general circulation in the City, notice which includes:
 - i. The name of the person(s) appealing;
 - ii. The location and description of the property involved;
 - iii. A brief description of the decision from which an appeal is taken; and
 - iv. The time and place of the hearing.
- E. The Board shall, in addition to the notice set forth in subsection D above, give written notice by regular mail or its equivalent to:
 - i. All abutting property owners (notice to abutting property owners shall be sent to the owner's address contained in the records of the City Tax Assessor);
 - ii. The person(s) making the appeal; and

- iii The Planning Board or the Code Enforcement Officer, as appropriate.

1305 VARIANCE PROCEDURES

The following procedures shall apply to applications for a variance:

- A.** An application for a variance may be made by any person with a possessory, contractual, or other legal or equitable interest in the property.
- B.** An application for a variance shall be made by filing with the Zoning Board of Appeals a written application for a variance, which shall include:
 - i. An original or copy of the deed, agreement, option or other instrument showing the applicant's interest in the property;
 - ii. A sketch drawn to scale showing lot lines, the locations of existing and proposed buildings, and other physical features such as septic system locations, well, etc.; and
 - iii. A concise statement of the nature of the variance sought.
- C.** The Board shall hold a public hearing on the variance request within 30 days of its receipt of the request. At least seven days prior to the date of the hearing on the variance, the Board shall cause to be published in one issue of the newspaper of general circulation in the City, notice which includes:
 - i. The name of the person(s) seeking the variance;
 - ii. The location and description of the property involved;
 - iii. A brief description of the nature of the variance sought; and
 - iv. The time and place of the hearing.
- D.** The Board shall, in addition to the notice set forth in subsection C above, give written notice by regular mail, or its equivalent to:
 - i. All abutting property owners (notice to abutting property owners shall be sent to the owner's address contained in the records of the City Tax Assessor);
 - ii. The person(s) seeking the variance; and
 - iii. The City Planner and the Code Enforcement Officer.
- E.** Whenever the Board grants a variance under this ordinance, a certificate indicating the name of the current property owner; identifying the property by reference to the last recorded deed in its chain of title; indicating the fact that a variance, including any conditions of variance, has been granted; and the date of granting shall be prepared in recordable form and provided to the applicant for recording in the Hancock County Registry of Deeds. Variances not recorded within 30 days of the date of being provided to the applicant shall be invalid. No rights may accrue to the variance recipient or his heirs, successors or assigns unless and until the recording is made within 30 days.

1306 PROCEDURES FOR PUBLIC HEARINGS

The following procedures shall be used in the conduct of public hearings conducted pursuant to this Article:

- A. The Zoning Board of Appeals shall establish procedures to maintain orderly procedure and to allow each side to be heard. All questions and answers shall be directed through the chairman, and all persons at the hearing shall abide by the order of the chairman.
- B. Any party may be represented by an agent or attorney. The participation of that agent or attorney shall be governed by the procedures established by the Board.
- C. Hearings shall not be continued except upon a showing of good cause.

1307 DECISIONS OF THE BOARD

- A. A concurring vote of at least three members present and voting shall be necessary for the Zoning Board of Appeals to reverse an order, requirement, decision, or determination of the Code Enforcement Officer or the Planning Board, or to grant a variance.
- B. The applicant for the appeal or variance shall bear the burden of proof on all issues.
- C. Administrative relief may be granted only where the Board finds that the decision of the Code Enforcement Officer or the Planning Board from which appeal is made was clearly contrary to the specific provisions of this ordinance.
- D. A variance may be granted only where the Board finds that the applicant has proven each requirement by a preponderance of the evidence.
- E. The Board shall decide all appeals or variance requests within 30 days after the close of the public hearing.
- F. The Board may reconsider any decision reached under this section within 30 days of its prior decision. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 30 days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

1308 APPEALS TO THE SUPERIOR COURT

Any party may take an appeal, within 45 days after the decision is rendered, to the Superior Court from any order, relief or denial by the Zoning Board of Appeals. Such appeal shall be made in accordance with the Maine Rules of Civil Procedure, Rule 80B.

1309 STAYS OF PROCEEDINGS

An appeal to the Zoning Board of Appeals stays all legal proceedings in furtherance of the action from which appeal is taken unless the Code Enforcement Officer or the Planning Board from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with that Code Enforcement Officer or Planning Board, as appropriate, that by reason of the facts stated in the certificate that a stay would cause immediate peril to life and property. If the Board concurs with the opinion set forth in the certificate, the proceedings shall not be stayed otherwise than by a court of record on application, on notice to the Code Enforcement Officer or Planning Board, as appropriate, from whom the appeal is taken. In the event such a certificate is filed with the Board, the Board shall conduct a hearing on the property of a stay. The hearing shall be conducted in accordance with the procedures set forth in 1303 General Procedures and Appeals Procedures sections of this article.