

TOWN OF LAMOINE
BOARD OF APPEALS ORDINANCE
2015

1. ESTABLISHMENT:

Pursuant to 30-A MRSA Section 2691, The Town of Lamoine hereby establishes The Town of Lamoine Board of Appeals Ordinance.

2. PURPOSE:

To enable the citizens of Lamoine a consistent policy in regards to the appeals process in a single document. It will also provide the citizens an inexpensive review by a board of their peers. This Ordinance is not intended to grant jurisdiction to the Board of Appeals, but rather to codify the procedures for all proceedings before the Board.

3. APPOINTMENT:

A. Appeals Board members shall be appointed by the Board of Selectmen and sworn by the clerk or another person authorized to administer oath.

B. The Board shall consist of 7 members, 5 regular members and 2 alternates and all must be legal residents of the Town of Lamoine. The Board shall elect annually a Chairman, Vice Chairman, and Secretary from its membership by a majority vote of the regular members.

C. The term of each member shall be 3 years.

D. When there is a permanent vacancy of either a full or alternate member, the Chairman of the Board shall immediately notify the Board of Selectmen in writing. The Selectmen shall within 60 days of the occurrence, appoint a person to serve for the unexpired term. [Here and throughout this document, all references are to Calendar Days.] A vacancy shall occur upon the resignation or death of any member, or when a member ceases to be a voting resident of the Town of Lamoine. The Board of Selectmen may remove members of the Board of Appeals by unanimous vote, for cause, after notice and hearing.

E. A municipal officer or the spouse of a municipal officer may not be a member.

4. OFFICERS AND DUTIES:

A. The officers of the Board shall consist of a Chairman, Vice Chairman, and Secretary, who shall be elected annually by a majority of the Board.

B. CHAIRMAN. The Chairman shall perform all the duties required by law and shall preside at all meetings of the Board. The Chairman 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 Chairman will also be the official spokesman of the Board.

C. VICE CHAIRMAN. The Vice Chairman shall perform the duties of the Chairman when the Chairman is not available.

D. SECRETARY. The Secretary shall keep minutes of all Board proceedings, showing the vote of the Board on each question. The Secretary will 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, and agreements made between parties and the Board regarding procedures, the testimony presented, findings of fact and conclusions, the decisions of the Board and the date of issuance of the decision. All records to be maintained or prepared by the secretary are public records. They shall be filed in the Town Office and may be inspected at reasonable times.

5. CONFLICT 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 or the person’s immediate family (grandfather, father, wife, son, grandson, e.g.) or his employer or the employer of any member of the person’s immediate family. A Board member who owns or has an interest in abutting property shall be deemed to have a “conflict of interest”

6. 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:

- i. The Board may interpret the provisions of any applicable town ordinance, which is called into question.
- ii. The Board shall have jurisdiction to hear those issues specified by the Select Board or Town Meeting in the underlying substantive ordinance.

7. MEETINGS:

A. The Chairman may call special meetings of the Board. At least 10 days 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.

B. The Chairman shall call a special meeting within ten (10) days of receipt of a written request from any member of the Board whose request specifies the matter to be considered at such special meeting.

C. 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. The Board shall not hold executive sessions except for purposes allowed by law.

8. VOTING:

A. A quorum shall consist of three members of the Board.

B. No hearing or meeting of the Board shall be held, nor any action taken, in absence of a quorum, however, the members present shall be entitled to request the Chairman to call a special meeting for a subsequent date.

- C. All matters shall be decided by a vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the members attending.
- D. A tie vote shall be considered a rejection of the appeal application under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing a quorum for such matter.
- F. The Chairman shall appoint an alternate member to act for a regular member who is either disqualified from voting, unable to attend the hearing, or absent for a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member until the case is decided.

9. APPEAL PROCEDURE:

- A. Any person aggrieved by an action, which comes under the jurisdiction of the Board pursuant to Section 5 must file such application for appeal, in writing on forms provided within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the Town Lamoine to the attention of the Chairman, Lamoine Board of Appeals, setting forth the ground for his/her appeal.
- B. The fee to accompany applications for appeal shall be set by the Selectmen. Checks are to be made payable to the Town of Lamoine Board of Appeals.

10. PUBLIC HEARINGS:

- A. The Board shall schedule a public hearing on all appeals within thirty (30) days of the filing of a completed appeal application.
- B. The Board shall cause notice of the date, time and place of such hearing, to the person making the application and to be published in a newspaper of general circulation in the municipality, at least ten (10) days prior to the hearing. The Board shall also cause notice of the hearing to be given to the Selectmen, Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least twenty (20) days prior to the hearing.
- C. The Board may provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The Board Chairman will determine the order of presentation at the public hearing. All parties will be given the opportunity to present their case.
- E. The Board may receive comments and questions from observers and interested citizens who wish to express their views.
- F. The Board may call its own witnesses, such as the Code Enforcement Officer.
- G. The Board may have a de novo or administrative hearing based on current laws and regulations. The Board will decide the type of hearing. The Board may have a de novo hearing in situations where there has been no hearing with respect to the decision under appeal or where due process requires it. If the Board determines that a de novo hearing is required, the Board will make specific findings setting forth the reasons for their decision.
- H. The hearing will conclude when all parties have been heard. 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.
- I. The Board may waive any of the above rules if good cause is shown.

11. DECISIONS:

A. The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. The records are public and shall be posted or filed in the Lamoine Town Office and inspected at reasonable times.

B. The transcripts of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become 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.

C. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act was clearly contrary to specific provisions of the Ordinances of the Town of Lamoine or unsupported by substantial evidence in the record.

D. Decisions of the Board shall be filed or posted in the Town Office and shall be made part of the public record. The appellant shall be notified in writing within seven (7) days of the decision of the Board. The notice will include the finding of fact, conclusions and may refer to evidence in the record upon which the decision is based.

E. 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 thirty (30) days of its prior decision. A meeting to decide whether to reconsider shall be called by the Chairman. The Board may conduct additional hearings and receive additional testimony. Reconsideration may be, but not limited to, one of the following reasons:

- a. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
- b. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction

12. APPEALS:

Within forty-five (45) days after the decision is rendered [date of the final vote by the Board], the decision of the Board of Appeals can be appealed to Superior Court in accordance with State Law, by any party of standing to the decision.

13. SEVERABILITY:

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

14. PRECEDENT:

This Ordinance takes precedent over all other Town Ordinances pertaining to appeals and the appellant process.