

+AMENDMENT TO ZONING ORDINANCE ARTICLE X-BOARD OF APPEALS

Article X of the Limerick Zoning Ordinance is hereby repealed and replaced with the following:

ARTICLE X-BOARD OF APPEALS

A. Establishment

A Board of Appeals is hereby established pursuant to 30-A M.R.S.A. § 2691.

B. Appointment

1. Members of the board of appeals shall be appointed by the municipal officers, who shall determine their compensation, and be sworn by the municipal clerk or other person authorized to administer oaths.
2. The board shall consist of five (5) members.
3. The term of each member shall be three (3) years.
4. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member fails to attend four (4) consecutive regular meetings without a reasonable excuse, or when a member ceases to be a voting resident of the town. The municipal officers may remove members of the board of appeals by majority vote, for cause, after notice and hearing.
5. Neither a municipal officer nor his or her spouse may serve as a member or alternate member of the board of appeals.

C. Organization, Rules and Procedures

1. The board shall elect a chairperson, co-chairperson, and a secretary from among its full voting members and create and fill such other offices as it may determine. The term of all offices shall be one (1) year with eligibility for reelection.
2. 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 of the board present and voting, except the member who is being challenged.
3. The chairperson shall call one regular meeting each month, provided there is business to conduct.

4. No meeting of the board shall be held without a quorum consisting of three (3) members. No action shall be taken on the issue before the board without a majority vote of those members present and voting.

5. The chairperson shall call one meeting annually to elect officers.

D. Duties and Powers

1. The board of appeals may adopt rules and procedures for transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings, and determinations.

2. The board of appeals shall file all rules and procedures and subsequent revisions with the Town Clerk. Copies shall be provided to the municipal officers for their information.

3. The board of appeals shall perform such duties and exercise such powers as are provided by the ordinances of the Town of Limerick and the laws of the State of Maine.

4. The board of appeals may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

5. The Board may interpret the provisions of any applicable municipal ordinance it has been given the jurisdiction to hear.

E. Jurisdiction

1. The Board of Appeals is authorized to hear and decide appeals as an appellate review where it is alleged there is an error in any administrative decision, order, requirement, or determination made by the Code Enforcement Officer or Planning Board under the following Ordinances.

a. Zoning Ordinance of the Town of Limerick, Maine.

b. Planning Board Standards for Reviewing Subdivisions.

c. Shoreland Zoning Ordinance of the Town of Limerick, Maine.

d. Flood Plain Ordinance of the Town of Limerick, Maine.

e. Sludge Ordinance of the Town of Limerick, Maine.

f. Building Code Ordinance of the Town of Limerick, Maine.

g. The Growth Ordinance of the Town of Limerick, Maine.

h. The Communication Tower Ordinance of Limerick, Maine.

2. The Board of Appeals is authorized to hear variances in specific cases but only within the limitations set forth in this ordinance.
3. The Board of Appeals is authorized to hear the following:
 - A. Permit a non-conforming temporary use for an initial period of not more than two years. Permits may be renewed by the Board of Appeals for successive periods of not more than one year each.
 - B. Permit in a Commercial District manufacturing which is incidental to a retail business where articles are sold at retail on the premises and where not more than five (5) operators are employed in such manufacturing.
 - C. Permit in a Commercial District trailer camps or mobile home subdivisions provided that no trailer or mobile home shall be located on a lot smaller than 2,000 square feet in area and follow the regulations adopted by the Selectmen and as outlined in the State Plumbing Code.

F. Variances

1. Variances may be permitted only under the following conditions:
 - a. Variances are obtainable only for height, minimum lot size, structure size, setbacks, and open space requirements.
 - b. An application for a variance may be filed directly with the Board of Appeals in accordance with the procedures below.
 - c. For a variance appeal the applicant shall submit:
 1. A sketch drawn to scale of 1" = 100' showing lot lines, location of existing building and other physical features pertinent to the variance request.
 2. A concise written statement stating what variance is requested.
 - d. Variances cannot, under any circumstances, be obtainable for establishment of any uses otherwise prohibited.
 - e. The Board shall not grant a variance unless it finds that all the following criteria are met:
 1. that the land in question cannot yield a reasonable return unless a variance is granted;

2. that the need for a variance is due to the unique circumstances of the property and not the general conditions in the neighborhood;
3. that the granting of a variance will not alter the essential character of the locality; and
4. that the hardship is not the result of action taken by the applicant or a prior owner.

f. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the Ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary to this end.

g. The Board of Appeals is also authorized to hear and decide requests for disability variances as provided in 30-A M.R.S.A. § 4353 (4-A).

G. Appeal Procedure

1. Making an Appeal

a. Any appeal authorized by this Article may be taken to the Board of Appeals. Where an appeal is taken by an aggrieved person from any administrative decision of the Code Enforcement Officer or Planning Board, the appeal 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.

b. An appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal.

c. The Board of Appeals shall notify the Board of Selectmen, Planning Board, Code Enforcement Officer, and applicant of the appeal. Notice shall also be provided, where the appeal is of an approved permit, to the holder of the permit. In the case of an application for a variance in a shoreland zoning district, a copy of the application, together with all supporting information provided by the applicant, shall be forwarded to the Commissioner of the Maine Department of Environmental Protection at least twenty (20) days prior to taking any action on the variance application. If the Commissioner of the Department of Environmental Protection submits any comments in response to the variance application, the Board of Appeals shall make such comments part of the record and shall consider them prior to taking action on the variance application.

d. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board shall transmit to the Board of Appeals all the papers specifying the record of the decision appealed from.

e. 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 one newspaper of general circulation in the area at least seven (7) days prior to the hearing. All costs of the hearing such as: public notice, secretary fees, etc. are to be borne by the applicant.

f. In an administrative appeal the applicant has the burden of proof to demonstrate that the Code Enforcement Officer or Planning Board acted contrary to the Ordinance. The Board of Appeals shall hear an appeal of any decision of the Planning Board on an appellate basis and shall limit its review to the record developed before the Planning Board and shall not accept any new evidence or testimony. The Board of Appeals may only reverse a decision of the Planning Board if it determines that the Planning Board's decision was based on an error of law or a mistake of fact.

2. Hearings

a. In any appeal from a decision of the Code Enforcement Officer or any variance appeal, the Board shall conduct a de novo hearing as follows:

i. 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.

ii. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chairperson. All persons at the hearing shall abide by the order of the Chairperson.

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

iv. The Code Enforcement Officer shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material s/he deems appropriate for an understanding of the appeal.

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

vi. The Board of Appeals shall include a statement of its findings of fact and conclusions of law as part of its decision.

b. The Board of Appeals shall hear any appeal of a decision of the Planning Board solely on an appellate basis and shall only reverse a decision of the Planning Board that contains one or more errors of law or fact.

i. The Board of Appeals shall not consider or accept new evidence or testimony and shall limit its review to the record developed before the Planning Board.

ii. The person bringing the appeal and any persons in opposition to the appeal shall be limited to a presentation of arguments as to why the decision of the Planning Board is in error.

H. Decisions of the Board of Appeals

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

2. The concurring vote of a majority of the members of the Board making up the quorum shall be necessary to reverse any order, requirement, decision, or determination of the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter on which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance. A tie vote shall constitute a rejection of the application being considered.

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

4. 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 petitioner, his representative or agent, the Code Enforcement Officer, Planning Board, and Selectmen within ten (10) days of the decision date.

5. 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.

6. The applicant shall be responsible for a recording a certificate of variance in the York County Registry of Deeds within 90 days of the final written approval. The variance will not be valid until it is recorded. If the variance is not recorded within the required 90-day period, it shall become void.

I. Appeal to Superior Court

Except as provided in Section J of this Article, any aggrieved party may take an appeal to Superior Court in accordance with State law within forty-five (45) days from the date of any decision of the Board of Appeals.

J. Reconsideration

The Board of Appeals may reconsider any decision within thirty (30) days of its prior decision, if the applicant can provide new and substantial evidence to reconsider. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that 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 I of this Article, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

K. Severability Clause

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

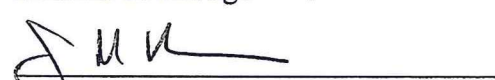
L. Effective Date

The effective date of this amendment is June 13, 2017

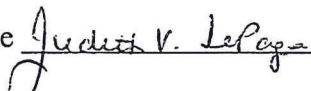
Board of Selectmen, Limerick, ME


Joanne L. Andrews


Roland C. LePage


John M. Medici

Attest: A true copy of an ordinance entitled, "Amendment to the Limerick Zoning Ordinance, Article X-Board of Appeals as certified to me by the municipal officers of Limerick on the 15th day of May, 2017."


Signature 
Judith V. LePage, Town Clerk

OFFICER'S RETURN

County of York, ss.

I certify that I have on this day posted one copy of an ordinance entitled, "Amendment to the Limerick Zoning Ordinance, Article X- Board of Appeals attested by the municipal clerk, at the Limerick Municipal Building, Limerick Post Office and Limerick Supermarket on May 23, 2017 which is at least seven (7) days prior to Election Day.

Dated at Limerick on May 23, 2017


Tawny Mann
Resident, Town of Limerick