

THE TOWN OF DAMARISCOTTA BOARD OF APPEALS ORDINANCE

1. Establishment

Pursuant to 30-A MRSA Sections 2691 and 4353, the Town of Damariscotta hereby establishes the Town of Damariscotta Board of Appeals.

2. Appointment

- A. Appeals Board members shall be appointed by the Board of Selectmen and sworn by the clerk or other person authorized to administer oaths.
- B. The Board shall consist of five (5) voting members with staggered three (3) year terms. Two (2) alternate members may be appointed.
- C. When there is a permanent vacancy, the municipal officers shall within 60 days of its occurrence 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 ceases to be a voting resident of the Town. When a vacancy occurs, the chairman of the Board shall immediately so advise the Town Manager in writing. The Board of Selectmen may remove members of the Board of Appeals by unanimous vote, for cause, after notice and hearing per Article IV Section 4.01 of the Damariscotta Town Charter.
- D. A municipal officer or the spouse of a municipal officer may not be a member.

3. Training Requirements

- A. All new Board members must complete an MMA approved training course within one year of appointment, or at the earliest scheduled MMA training session, whichever is earlier.

4. Organization

- A. The chairman or his designee shall call meetings of the Board as required. The chairman shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. A quorum of the Board necessary to conduct an official Board meeting must consist of at least a majority of the Board's members. The chairman or his designee shall preside at all meetings of the Board and be the official spokesman of the Board.
- B. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members except the member who is being challenged.
- C. Voting shall be determined by simple majority of those present at any meeting except that at least 3 votes are required for passage of any motion.
- D. The Board shall adopt rules for transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings and determinations. In the absence of its own adopted rules, Roberts Rules of Order, latest edition, will be used. All records shall be deemed public and may be inspected at reasonable times.
- E. 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 municipal clerk's office and may be inspected at reasonable times.

F. The Chairmen of the Appeals Board will vote only when there is a tie.

5. Scope of Authority

A. Powers and Duties:

1. **Administrative Appeals.** To hear and decide appeals 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. Following such a hearing, the Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only upon a finding that the decision is clearly contrary to specific provisions of the applicable ordinance. To the extent permitted by law, the Board shall not conduct a de novo review, but shall act in a purely appellate capacity, and shall limit its review to the record developed before the Code Enforcement Officer or Planning Board, and to the parties' arguments based on that record.
2. **Variances.** To hear variance requests and authorize variances as provided in Title 30-A MRSA Section 4353. In hearing variance requests, the Board may receive evidence and make findings of fact as provided by statute.
3. **Other Appeals.** To hear and decide such other cases as may by ordinance be appealed to the Board and to conduct such review in accordance with the standards set forth in such ordinances.
4. **Ordinance Interpretation.** To interpret the provisions of any ordinance at issue in any appeal or variance hearing.

B. **Limitations on Variances.** The Board may grant a variance only in accordance with State law (30-A MRSA Section 4353 or as amended). A variance shall not be granted to permit a use otherwise prohibited in a particular district.

C. **Procedures:** Any appeal to the Board of Appeals must be initiated within 30 days of notice of the decision being appealed. For this purpose, the "decision being appealed" shall consist of the final written decision of the Code Enforcement Officer or Planning Board. An applicant for a permit or other approval or decision shall be deemed to have received notice three days after mailing of the final written decision to the applicant. Other interested parties shall be deemed to have received notice three days after a copy of the final written decision has been filed as a public record in the Town Clerk's office.

1. **Fee for public hearing cost:** The fee to be charged shall be set by the Selectmen and may be reviewed and amended from time to time. The Selectmen may, on application in writing and for cause shown, waive or modify the fee downward based on poverty or infirmity or such other grounds as they may deem reasonable and appropriate.

D. **Public Hearing:** Before making a decision on any administrative appeal, the Board shall hold a public hearing, which shall not be a de novo hearing. The hearing shall be held within 30 days after the receipt of the appeal, or within a reasonable time thereafter with the consent of all parties and at the sole discretion of the Chairman of the Board of Appeals, and notice of the same shall be published in a newspaper with local circulation at the applicant's expense, at least 7 days in advance of the hearing.

E. **Evidence in Variance Hearings.** In hearing a variance application, 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 to a variance hearing 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.

- F. Board of Appeals Record; Notice of Decision. The transcript of testimony, if any and exhibits, together with all papers and requests filed in the Board's proceeding, constitute 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 any 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 parties, a party's representative or agent, the Planning Board, agency or office and the municipal officers within 7 days of the Board's decision.
- G. Reconsideration. The Board may reconsider any decision reached under the section within 30 days of its original decision. In reconsidering a variance application, the Board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.
- H. Appeals. Any party may take an appeal to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B, within the time provided in 30-A MRSA Section 2691(3)(G), or such other time as may be provided by law.
- I. In all events this Section 4 shall be consistent with State law as amended from time to time, anything herein to the contrary notwithstanding.
- J. Variance from dimensional standards.** The Board of Appeals is authorized to grant a variances from the dimensional standards of the Land Use Ordinance when strict application of the Ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:
 - 1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
 - 2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
 - 3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
 - 4. No other feasible alternative to a variance is available to the petitioner;
 - 5. The granting of a variance will not unreasonably adversely affect the natural environment; and
 - 6. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

[Note: Under its home rule authority, Damariscotta may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of the Land Use Ordinance. An amended land use ordinance also may explicitly delegate to the Planning Board the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced

setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.]

Joshua Pinkham

Vicki Pinkham

Richard McLean

David Wilbur

**Board of Selectmen
Town of Damariscotta**

Attest: A true copy of an ordinance entitled “Board of Appeals Ordinance Damariscotta, Maine”, as certified to me by the municipal officers of Damariscotta, Maine on the 18th day of June, 2008.

Cheryl Pinkham, Town Clerk
Damariscotta, Maine