

New Chapter 10: Board of Appeals created from amendments to chapter 280-zoning, also amends listed sections of Chapters 116, 128, 149, & 265. Part of City Council Order #: 19-258-01 adopted 5/7/2019.

AN ORDINANCE AMENDING CITY CODE REGARDING THE SECTIONS PERTAINING TO THE BOARD OF APPEALS

Chapter 10. Board of Appeals; Appeals¹

§ 280-610-1 Creation and purpose.

Pursuant to 30-A M.R.S.A. § 2691 and 3001, there is hereby created a ~~Zoning~~ Board of Appeals for the City to hear appeals ~~from any action or failure to act of the Code Enforcement Officer as expressly authorized in the Sanford City Code in conjunction with the interpretation or enforcement of this chapter when authorized in the Sanford City Code.~~

§ 280-610-2 Membership; terms of office; qualifications; vacancies; removal.

- A. The ~~Zoning~~ Board of Appeals shall consist of ~~the number of seven~~ members set forth in the City Charter who shall be appointed by the City Council and who shall serve without pay and who shall be representatives of the City at large. Each member shall be appointed for a term of three years. Members appointed shall be residents of the City. A City Councilor or his/her spouse may not be a member of the ~~Zoning~~ Board of Appeals.
- B. A vacancy may occur by reason of resignation, death, giving up residency or failure to attend at least 75% of all meetings during the previous 12 months. The Chair of the ~~Zoning~~ Board of Appeals shall immediately notify the City Council in writing of any vacancy when it occurs.
- C. Members may be removed for cause by the City Council after presentation of written charges and public hearing.

§ 280-610-3 Officers; meetings; records; quorum; rules of procedure.

The operation of the ~~Zoning~~ Board of Appeals shall be governed by the following:

- A. Officers. The ~~Zoning~~ Board of Appeals shall annually elect a Chair and Secretary and such other officers as it chooses from its own membership.
- B. Meetings.
 - (1) Meetings of the ~~Zoning~~ Board of Appeals shall be held regularly, at least twice each month ~~for the purpose of hearing all appeals in order for hearing on said days as provided in § 280-8-2~~. The ~~Zoning~~ Board of Appeals may cancel one or more of the required meetings if there are no applications for its consideration. All meetings of the ~~Zoning~~ Board of Appeals will be open to the public.
 - (2) The Chair shall also call meetings of the ~~Zoning~~ Board of Appeals when requested to do so by a majority of the members or by the City Council.

¹ Codification note: Labeling these sections as Chapter 10 is used with the intention of relocating the Board of Appeals sections as here referenced as Chapter 10 to City Code "Part I: Administrative Legislation."

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- C. Records. The ~~Code Enforcement Officer Secretary, acting through the Code Enforcement Officer~~ shall maintain a permanent record of all ~~Zoning~~ Board of Appeals meetings and all of its correspondence. The ~~Code Enforcement Officer Secretary~~ shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the ~~Zoning~~ Board of Appeals, such as, but not limited to, the vote of each member upon each question. All records to be maintained or prepared by the ~~Code Enforcement Officer Secretary~~ are deemed public, shall be filed in the Municipal Clerk's office and may be inspected at reasonable times.
- D. Quorum. A quorum of the ~~Zoning~~ Board of Appeals necessary to conduct an official meeting shall consist of at least ~~a majority of the Board's membership~~ four members.
- E. Conflict of interest. Prior to consideration of an application, any member who believes he or she may have a conflict of interest relative to the item shall advise the Chair of the potential conflict and the reasons therefor. 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 who is being challenged.
- F. Evidence. The ~~Zoning~~ Board of Appeals 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.
- G. Public record of deliberations. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the ~~Zoning~~ Board of Appeals, and the exhibits, together with all papers and requests filed in the proceeding, constitute the public record. All decisions become a part of the record and shall 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 otherwise delivered to the petitioner, the petitioner's representative or agent, the Planning Board, Planning Department, and the City Council within seven days of the Zoning Board of Appeals' decision.~~
- H. Reconsideration of ~~Zoning~~ Board of Appeals actions. The ~~Zoning~~ Board of Appeals may reconsider any decision ~~reached under this section~~ within ~~45~~ 30 days of its prior decision. A request of the Board of Appeals to reconsider a decision must be filed within 10 days of the decision that is being requested for reconsideration. A vote to reconsider and the action taken on that reconsideration shall occur and be completed within ~~30-45~~ days of the date of the vote on the original decision. The ~~Zoning~~ Board of Appeals may conduct additional hearings and receive additional evidence and testimony as provided in this section.
- I. Appeal of ~~Zoning~~ Board of Appeals actions. Any party may take an appeal, within 45 days of the date of the vote on the ~~original~~ final 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. The hearing before the Superior Court shall be without a jury.

§ ~~280-610-4~~ Powers and duties.

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~~Appeals shall lie from the decision of the Code Enforcement Officer to the Zoning Board of Appeals and from the Zoning Board of Appeals to the Superior Court according to the provisions of Maine law. The Zoning Board of Appeals shall have only the powers and duties listed below, except when this chapter the Sanford City Code provides jurisdiction to hear other matters:~~

A. Administrative appeals. The ~~Zoning~~ Board of Appeals, acting in an appellate capacity, is authorized to hear and decide where it is alleged there is an error in any order, requirement, decision or determination made ~~by the Code Enforcement Officer~~ in the enforcement of ~~this chapter~~ the City Code and when expressly authorized in the City Code. ~~The action of the Code Enforcement Officer may be modified or reversed by the Zoning Board of Appeals by concurring vote of a majority of the members present and voting.~~

B. ~~Dimensional~~ Variance appeals.

(1) The ~~Zoning~~ Board of Appeals is authorized to hear and decide variance appeals, in accordance with the criteria and procedures of Chapter 280, Zoning, Article VIII, Variances and Appeals ~~upon appeal, in specific cases where a relaxation of the terms of this chapter would not be contrary to the public interest and owing to conditions peculiar to the property which are not the result of the actions of the applicant.~~

~~(2) As used in this chapter, a dimensional variance is authorized only for height, area, size of structure or size of yards or open spaces.~~

~~C. Use variance appeals. The Zoning Board of Appeals is authorized to hear and decide, upon appeal, in specific cases where a relaxation of the terms of this chapter would not be contrary to the public interest and where, owing to conditions peculiar to the property which are not the result of the actions of the applicant, a literal enforcement of this chapter would result in unnecessary or undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of variance are undue hardship and unique physical circumstances applying to the property. A variance is not justified unless both elements are present in the case.~~

~~D.C.~~ Shoreland zoning appeals. The ~~Zoning~~ Board of Appeals is authorized to hear and decide appeals relating to the administration and enforcement of Chapter 270, Shoreland Zoning.

§ ~~280-8-210-5~~ Appeal procedure.

A. Filing of appeal.

(1) ~~In all cases~~ For administrative appeals, the applicant shall file the appeal with the Code Enforcement Officer setting forth the grounds of their appeal ~~a person aggrieved by a decision of the Code Enforcement Officer shall commence his or her appeal within 30 days after a decision is made by the Code Enforcement Officer. The appeal shall be filed with the Zoning Board of Appeals on forms approved by the Zoning Board of Appeals, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.~~

(2) For variance appeals, the applicant shall file the appeal with the Code Enforcement Officer, setting forth the grounds for granting of a variance.

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(3) The appeal shall be filed on forms approved by the Board of Appeals.

(4) The appeal shall be filed within 30 days of the decision which is being appealed.

(5) The fees to accompany the application shall be listed on the application.

(6) Upon receiving the application, the Code Enforcement Officer shall notify the Chairperson of the Board.

B. Hearing and notification.

(1) ~~In the case of appeals involving space and bulk regulations, uses, shoreland zoning, or administrative interpretation, t~~The Zoning Board of Appeals shall notify, by mail, the applicant and the owners of property abutting the property for which an appeal is taken, at least 10 days in advance of the hearing, of the location of the building or lot, the nature of the appeal and of the time and place for the ~~public~~ hearing thereon.

(2) The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of ~~public a~~ hearing shall not necessitate another hearing or invalidate any action by the ~~Zoning~~ Board of Appeals.

(3) Following the filing of a ~~n~~ complete appeal application, the ~~Zoning~~ Board of Appeals shall hold a ~~public~~ hearing on the appeal within 30 days. ~~The Zoning Board of Appeals shall notify the applicant, at least 10 days in advance, of the time and place of the hearing and shall publish notice of the hearing at least 10 days in advance in a newspaper of general circulation in the area.~~

C. Hearing procedures.

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

(2) The ~~Zoning~~ Board of Appeals may request the Code Enforcement Officer or his or her designated assistant to attend hearings and/or present to the ~~Zoning~~ Board of Appeals all plans, photographs, or other materials the ~~Zoning~~ Board of Appeals deems appropriate for an understanding of the appeal.

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

D. ~~Zoning~~ Board of Appeals action.

(1) Within ~~thirty (30) seven~~ days of the final public hearing, the ~~Zoning~~ Board of Appeals shall reach a decision on an appeal and shall inform, in writing, within seven (7) days of the decision, the appellant, by mail or hand delivered with copies to the Planning Board and the City Council ~~and the City Council of its decision and the reasons therefor.~~

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~~(2) Upon notification of the granting of an appeal by the Zoning Board of Appeals, the Code Enforcement Officer shall immediately issue a building permit in accordance with the conditions of approval.~~

~~E. Time limit for action by the applicant. A variance under the provision of this chapter secured by a vote of the Zoning Board of Appeals shall expire if the work or change is not substantially completed within 18 months of the date on which the appeal is granted, unless such time limit is extended by vote of the Zoning Board of Appeals in response to a written request of the applicant.~~

§ 10-6 Fees.

It is the intent and purpose of this section to establish fees which bear a reasonable relationship to the cost incurred by the City in the administration and enforcement of this chapter and other applicable laws and regulations.

A. To accomplish such purpose all application fees and charges shall be paid in advance at the time of application to the Code Enforcement Officer. All fees are non-refundable regardless of the outcome of the appeal.

B. The fee shall be established in the schedule of fees, as may be adopted by the City Council from time to time.

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§ 116-1 Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BOARD. ~~City of Sanford, Zoning~~ Board of Appeals.

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§ 128-4 Board of Appeals.

The ~~Zoning~~ Board of Appeals shall act as the Fire Prevention ~~Code~~ Board of Appeals in order to hear appeals of orders, decisions, or determinations made by the Fire Marshal or Building Official relative to application and interpretation of this code. Appeals to the ~~Zoning~~ Board of Appeals shall be submitted as otherwise set forth in City Code Chapter ~~10280, Zoning~~, regarding administrative appeals, ~~subject to the payment of any fees as may be determined by the municipal officers from time to time (§§ 280-20 through 280-23 and §§ 280-28 through 280-30[1]).~~

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§ 149-1.13 Appeals.

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The ~~Zoning~~ Board of Appeals, acting in an appellate capacity, shall act as the Licensing Board of Appeals in order to hear appeals of orders, decisions, or determinations made relative to application and interpretations of this Code. Appeals to the ~~Zoning~~ Board of Appeals shall be submitted as otherwise set forth in City Code, Chapter ~~10280, Zoning~~, regarding administrative appeals, ~~subject to the payment of any fees as may be determined by the municipal officers from time to time.~~

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~~§ 149-5.14 Appeals.~~

~~The Zoning Board of Appeals shall act as the Rental Housing License Board of Appeals in order to hear appeals of orders, decisions, or determinations made relative to application and interpretations of this article. Appeals to the Zoning Board of Appeals shall be submitted as otherwise set forth in City Code Chapter 280, Zoning, regarding administrative appeals, subject to the payment of any fees as may be determined by the municipal officers from time to time.~~

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~~§ 149-6.15 Appeals.~~

~~The Zoning Board of Appeals shall act as the Rental Housing License Board of Appeals in order to hear appeals of orders, decisions, or determinations made relative to application and interpretations of this code. Appeals to the Zoning Board of Appeals shall be submitted as otherwise set forth in City Code Chapter 280, Zoning, regarding administrative appeals, subject to the payment of any fees as may be determined by the municipal officers from time to time.~~

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~~§ 164-24 Appeals.~~

~~The Zoning Board of Appeals shall act as the Massage Therapist License Board of Appeals in order to hear appeals of orders, decisions, or determinations made relative to application and interpretations of this chapter. Appeals to the Zoning Board of Appeals shall be submitted as otherwise set forth in City Code Chapter 280, Zoning, regarding administrative appeals, subject to the payment of any fees as may be determined by the municipal officers from time to time.~~

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~~§ 209-10 Appeals.~~

~~The Zoning Board of Appeals shall act as the Victualer License Board of Appeals in order to hear appeals of orders, decisions, or determinations made relative to application and interpretations of this chapter. Appeals to the Zoning Board of Appeals shall be submitted as otherwise set forth in City Code Chapter 280, Zoning, regarding administrative appeals, subject to the payment of any fees as may be determined by the municipal officers from time to time.~~

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§ 265-9 Appeals and variances.

The ~~Zoning~~ Board of Appeals ~~of the Town of Sanford may~~, upon written application of an aggrieved party, shall hear and decide appeals from determinations of the Code Enforcement Officer in the administration or enforcement of the provisions of this chapter. The ~~Zoning~~ Board of Appeals may grant a variance from the requirements of this chapter...