

Power and Duties of Appeals Board

The powers and duties of the Board of Appeals shall be as follows:

1. **Appeals.** To hear and decide appeals where it is alleged that there is an error in any requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer, Planning Board, Road Commissioner or Plumbing Inspector in the administration of this Ordinance; and where it is alleged that there is an error in any requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance. The hearing on the appeal shall be considered a public hearing and subject to the public hearing notice requirements of Section G below.
 - a. **Code Enforcement Officer.** The Board of Appeals may hear and decide appeals by an aggrieved party where it has been alleged that there is an error in any interpretation, determination, requirement or decision made by the Code Enforcement Officer or in any other matter involving the Code Enforcement Officer in the administration or enforcement of this Ordinance. The burden of proof shall be on the Appellant to demonstrate that the Code Enforcement Officer erred. 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 evidence that was before the Code Enforcement Officer and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Code Enforcement Officer. The Board of Appeals may reverse the Code Enforcement Officer's action only upon a finding that said action was clearly contrary to applicable provisions of the Ordinance or that the record evidence compels a different conclusion.
 - b. **Planning Board.** The Board of Appeals may hear and decide appeals from any final decision of the Planning Board, by any aggrieved party. The Board of Appeals 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 Planning Board, and to the parties' arguments based on that record. The burden of proof shall be on the appellant to demonstrate that the Planning Board erred. The Board of Appeals shall have the power to affirm, reverse, or modify, with or without conditions, the decision of the Planning Board or , if the record is not sufficient or further information needs to be provided, to remand the matter back to the Planning Board for further proceedings. The Board of Appeals shall reverse the decision of the Planning Board only upon a finding that the decision was clearly contrary to the applicable provisions of the Ordinance or that the record evidence compels a contrary conclusion.
 - c. **Road Commissioner.** The Board of Appeals may hear and decide appeals where it has been alleged that there is an error in any interpretation, determination, requirement or decision made by the Road Commissioner in the administration of this Ordinance. The burden of proof shall be on the Appellant to demonstrate that the Road Commissioner erred. 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 evidence that was before the Road Commissioner and the parties' arguments based on that record evidence. In acting on administrative appeals, the Board of Appeals may sustain, modify or reverse the action of the Road Commissioner. The Board of Appeals may reverse the Road Commissioner's action only upon a finding that said action was clearly contrary to applicable provisions of this Ordinance or that the record evidence compels a different conclusion.

2. **VariANCES.** To authorize variances, within the limitations set forth in this Ordinance.

- Variances may be granted only from the lot area, lot coverage by structures, lot width, and setback standards of the district regulations.
- The Board of Appeals shall not grant a variance from dimensional requirements unless it finds that:
 - The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and
 - The strict application of the terms of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
 - The land in question cannot yield a reasonable return unless a variance is granted; and
 - The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - The granting of a variance will not alter the essential character of the locality; and
 - The hardship is not the result of action taken by the applicant or a prior owner.
- **Disability variance.** A disability variance may be granted pursuant to the following:
 - The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.
 - The Board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
 - The board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person

and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.

- The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
- For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability.
- The board may impose conditions on the variance granted pursuant to this subsection.
- For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.
- Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance, except as provided for in Article 3, Section D- Non-conforming Uses and/or Article 7, Section E.4.C- Non-conforming Uses.
- The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions on the variances as it deems necessary.

3. **Ordinance Interpretation.** The Board may interpret the provisions of any Town Ordinance which are called into question. An interpretation may be made as part of an appeal or may be at the request of the Board of Selectmen, Planning Board, Code Enforcement Officer, local Plumbing Inspector or Road Commissioner.
4. **District Boundary Lines Interpretation.** An interpretation of Zone boundaries may be made as part of an appeal hearing, or made at the request of the Board of Selectmen, Planning Board, or Code Enforcement Officer.
5. **Limitations.** The Board of Appeals may not hear appeals for requests for tax abatements or poverty abatements.