

Mercer Board of Appeals Ordinance

- 1. Establishment.** Pursuant to 30-A MRS 2691 and 4353, the Town of Mercer hereby establishes the Town of Mercer Board of Appeals Ordinance.
- 2. Organization.** A Board of Appeals shall be organized as follows.
 - A. Board of Appeals members shall be appointed by the Select Board and sworn by the clerk or other person authorized to administer oaths.
 - B. The board shall consist of 5 members, serving staggered terms of 3 years. One alternate member may be appointed. The board shall elect annually a chairperson, vice chair and secretary from its membership.
 - C. When there is a permanent vacancy the Select Board shall within 60 days of its occurrence appoint a person to serve the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member ceases to be a voting member of the town. When a vacancy occurs, the chairperson of the board shall immediately so advise the Board of Selectmen in writing. The Board of Selectmen may remove members of the Board of Appeals by unanimous vote, for cause, after notice and hearing.
 - D. Neither a municipal officer (Select Board member) nor a spouse of a municipal officer, a Planning Board member nor a spouse of a planning board member may be a member or associate member of the board.
 - E. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the members, excluding the member who is being challenged.
- 3. Procedure.** The following provisions govern the procedure of the board.
 - A. The chairperson shall call meetings of the board as required. The chairperson 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 chairperson, or the vice chair in the chairperson's absence, shall preside at all meetings of the board and be the official spokesman of the board.
 - B. 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.
 - C. The board may provide, by regulation that must be recorded by the secretary, for any matter relating to the conduct of any hearing, except that the chair may waive any regulation upon good cause shown. Unless otherwise established by ordinance, the board shall conduct a de novo review of any matter before the board subject to the requirements of paragraph D. If an ordinance establishes an appellate review process for the board, the board shall limit its review on appeal to the record established by the board or official whose decision is the subject of the appeal and to the arguments of the parties. The board may not accept new evidence as part of an appellate review.

D. 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 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.

E. Board meetings may be taperecorded, however a recording shall be made of any hearings conducted by the Board. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the board, 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 must 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 must be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within 7 days of the board's decision.

F. The board may reconsider any decision reached under this section within 45 days of its prior decision. 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 45 days of the date of the vote on the original decision. The board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

Notwithstanding paragraph G, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration or within the applicable time period under section 4482-A if the final municipal review of the project is by a municipal administrative review board other than a board of appeals.

G. Any party may take an appeal, within 45 days of the date of the vote on the original 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 must be without a jury.

H. For purposes of this section, a decision of the board is a final decision when the project for which the approval of the board is requested has received all required municipal administrative approvals by the board, the planning board or municipal reviewing authority and any other review board created by municipal charter or ordinance. If the final municipal administrative review of the project is by a municipal administrative review board other than a board of appeals, the time for appeal is governed by section 4482-A. Any denial of the request for approval by the board of appeals is considered a final decision even if other municipal administrative approvals are required for the project and remain pending. A denial of the request for approval by the board of appeals must be appealed within 45 days of the date of the board's vote to deny or within 15 days of final action by the board on a reconsideration that results in a denial of the request.

4. Jurisdiction. The board shall have the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, regulation or failure to act of any officer, board, agency or other body when an appeal is necessary, proper or required. No board

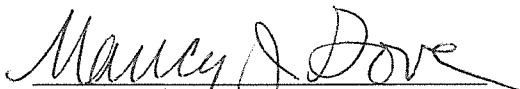
may assert jurisdiction over any matter unless the Town has by ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board. Absent an express provision in the ordinance that certain decisions of its code enforcement officer or board of appeals are only advisory or may not be appealed, a notice of violation or an enforcement order by a code enforcement officer under an ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court under the Maine Rules of Civil Procedure, Rule 80B. Any such decision that is not timely appealed is subject to the same preclusive effect as otherwise provided by law. Any board of appeals shall hear any appeal submitted to the board in accordance with Title 28-A, section 1054.

5. New Appeals. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be submitted to, or entertained by, the Board until one (1) year has elapsed from the date of the decision.

6. Effective Date. The effective date of this Ordinance shall be the date of adoption by Town Meeting vote.

Adopted on March 4, 2023

Attested to be a True Copy.

A handwritten signature in cursive script that reads "Nancy J. Gove". The signature is written in black ink and is positioned above a horizontal line.

Nancy J. Gove, Town Clerk