

## **Article VII Zoning Board of Appeals Camden Zoning Ordinance**

### **Section 1. Appointment and Composition**

- (1) There shall be a Zoning Board of Appeals in accordance with the provisions of 30-A M.R.S.A. Section 4353, as the same may be amended from time to time.
- (2) The Board shall consist of five members serving staggered terms of three years, appointed by the Board of Selectmen. The Board of Selectmen may also appoint three (3) alternate members to serve in the absence of regular members. Any alternate members appointed to the Zoning Board of Appeals shall serve one-year terms. During the absence of a regular member at any meeting, the Chairman of the Zoning Board of Appeals shall designate the alternate member who shall serve during the absence of the absent regular member.
- (3) Once a member of the Zoning Board of Appeals has been sworn into office, he or she shall continue in that office for the remainder of his or her term without having to renew said oath of office annually.

### **Section 2. Procedures**

- (1) The Zoning Board of Appeals shall conduct its meetings in accordance with the provisions of 30-A M.R.S.A. Section 4353, as the same may be amended from time to time.
- (2) The presence of three voting members of the Zoning Board of Appeals shall constitute a quorum.
- (3) An appeal or any application for action by the Zoning Board of Appeals shall be granted or a decision of the Code Enforcement Officer can be overruled only upon an affirmative vote of at least three members of the Zoning Board of Appeals.
- (4) Before rendering a decision on any appeal, the Zoning Board of Appeals shall conduct a public hearing, which shall be advertised ten days in advance in a local newspaper and posted in other places usually used for public notices, at the expense of the appellant.
- (5) The Zoning Board of Appeals shall not continue hearings to a future date except for good cause.
- (6) Written notice of the decision of the Board shall be sent to the applicant and the Code Enforcement Officer within seven days of its decision.
- (7) An appeal may be taken from any decision of the Zoning Board of Appeals to the Superior Court within 45 days after the decision, as provided by 30-A M.R.S.A., Section 4353, as the same may be amended from time to time.
- (8) The Zoning Board of Appeals shall keep records of its proceedings and such records shall be public.

### **Section 3. Powers and Duties**

The Zoning Board of Appeals shall have the following powers and duties:

- (1) **Administrative Appeals**  
To affirm, modify or set aside the action of the Code Enforcement Officer in issuing or denying building or use permits, sign permits, or certificates of compliance when it is alleged that the action is based on an erroneous interpretation of this Ordinance.

- (2) **Special Exception Permits**  
To approve, approve with conditions, or disapprove applications for special exception permits, according to the terms of Section 4 of this Article.
- (3) **Variances**  
To approve, approve with conditions, or disapprove variances from the strict enforcement of the provisions of this Ordinance only as they relate to the space and bulk standards of the district regulations or a performance standard contained in Article X, according to the terms of Section 5 of this Article.
- (4) **Changes in Nonconforming Uses; or Lots, Structures, and Uses in Shoreland Areas**  
To approve, approve with conditions, or disapprove requests to change a nonconforming use such that it is less nonconforming or no more nonconforming than the lawfully existing situation, as authorized in Article VI, Section 3 of this Ordinance; or to change a nonconforming aspect of a lot, structure or use in a shoreland area such that it is less nonconforming or no more nonconforming than the lawfully existing situation, as authorized in Article VI, Section 6 of this Ordinance.
- (5) **Standards of Home Occupation**  
To approve, approve with conditions, or disapprove requests to exceed the specific standards concerning home occupations concerning the number of employees, traffic generated, and percentage of floor area set forth in Article X, Part II, Section 7 of the Zoning Ordinance, in accordance with the Standards of Article VII, Section 6 of this Zoning Ordinance.
- (6) **Off-Street Parking**  
To grant waivers of the off-street parking requirements in the Downtown, River Business, Transitional River Business, and Harbor Business Districts in accordance with Article X, Part II, Section 4(2)(c)(4)(iii) and Article X, Part II, Section 2(c)(5).
- (7) **Stop Work Orders, Revocation of Permits, and Other Similar Notices**  
To affirm, modify or set aside the action of the Code Enforcement Officer in issuing "stop work" orders, revocation of permits, notices of violations of this Ordinance, and other similar actions, when it is alleged that such action is based upon an error of the Code Enforcement Officer, in concluding that there has been a violation of the Zoning Ordinance by any person, noncompliance with building permits or other sufficient cause under the Zoning Ordinance.
- (8) To decide an appeal of a site plan decision of the Planning Board concerning errors of law, according to the terms of Article XII, Section 2(8).
- (9) To decide an appeal of a decision of the Code Enforcement Officer or the Planning Board, as an administrative appeal, from a decision pursuant to the Wireless Telecommunications Facility Siting Ordinance, when it is alleged that the decision is based on an erroneous interpretation of that Ordinance. The review of the Zoning Board of Appeals shall be based exclusively on the record before the Planning Board. An appeal of a decision of the Code Enforcement Officer shall be *de novo* (requiring an evidentiary hearing).

## **Section 4. Special Exception Permits**

### **(1) Purpose and Applicability**

The purpose of this Section is to enable the Zoning Board of Appeals to review certain proposed uses of the land that have the potential of creating unusual or undue impacts on surrounding properties, municipal facilities, or the natural environment. A building, structure, or parcel of land may be used for a special exception use if the use is specifically listed in the regulations governing the zoning district in which the use is proposed, and if a special exception permit is approved by the Zoning Board of Appeals.

### **(2) Application for Special Exception Permit**

Application for a special exception permit shall be made to the Code Enforcement Officer on forms provided for the purposes accompanied by such fee as the Board of Selectmen shall set on an annual basis for such applications. The applicant shall:

- (a) Clearly specify the location of the proposed use, including street address, Assessor's tax map and lot number, and a location map.
- (b) Describe the exact nature of the proposed use.
- (c) Submit such other materials as will enable the Zoning Board of Appeals to determine that the standards for approval of a special exception permit have been met. The burden of providing the information upon which the Board bases its findings and of proving conformity with the standards shall be the applicant's.

### **(3) Standards for a Special Exception Permit**

A special exception may be granted by the Zoning Board of Appeals only in the event that the applicant has established to the satisfaction of the Board that:

- (a) Neither the proposed use nor the proposed site upon which the use will be located is of such a character that the use will have significant adverse impact upon the value or quiet possession of surrounding properties greater than would normally occur from such a use in the zoning district. In reaching a determination on this standard, the Board shall consider:
  - (i) the size of the proposed use compared with surrounding uses;
  - (ii) the intensity of the proposed use, including amount and type of traffic to be generated, hours of operation, expanse of pavement, and similar measures of intensity of use, compared with surrounding uses;
  - (iii) the potential generation of noise, dust, odor, vibration, glare, smoke, litter, and other nuisances;
  - (iv) unusual physical characteristics of the site, including size of the lot, shape of the lot, topography, and soils, which tend to aggravate adverse impacts upon surrounding properties; and
  - (v) the degree to which landscaping, fencing, and other design elements have been incorporated to mitigate impacts on surrounding properties.
- (b) Municipal facilities serving the proposed use will not be overburdened. In reaching a determination on this standard the Board shall consider:
  - (i) the ability of traffic to safely move into and out of the site at the proposed location;
  - (ii) the presence of facilities to assure the safety of pedestrians passing by the site;
  - (iii) the capacity of the street network to accommodate the proposed use;

- (iv) the capacity of public sewerage and water facilities, if they are to be used, to accommodate the proposed use; and
  - (v) the capacity of the public storm drainage system, if it is to be used, to accommodate the proposed use.
- (c) The natural characteristics of the site, including topography, drainage, and relationship to ground and surface waters and flood plains, shall not be such that the proposed use when placed on the site will cause undue harm to the environment or to neighboring properties.
- (d) **Undisclosed Future Uses:**  
In an application for a special exception requiring renovation or enlargement of an existing building or new construction, the applicant shall not be required to name specifically all the uses on the lot if they are not known at the time of renovation, enlargement or new construction. Instead, the applicant shall state on his application all the specific uses that are anticipated for the lot. For the area on the lot for which the use is not then known, the applicant shall designate those areas as "undisclosed future uses". The applicant must designate on the application at least one known special exception use. The Zoning Board of Appeals may grant special exceptions for the known specific uses and the project may proceed to site review, if required, and a building permit may be issued after site plan review, with the condition that any required special exceptions for the undisclosed future uses will be obtained when the uses are determined. The lot shall not be used for the undisclosed future uses which require a special exception until the required special exception is obtained.
- (e) In considering the foregoing standards the Zoning Board of Appeals shall fully review these standards even though the applicant may also be subject to site plan approval.

(4) **Additional Standards in Shoreland Areas**

For special exception permit applications in shoreland areas, the Board shall additionally find that the proposed use:

- (a) will not result in unreasonable damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
- (b) will reasonably conserve shoreland vegetation;
- (c) will reasonably conserve visual points of access to waters as viewed from public facilities;
- (d) will reasonably conserve actual points of public access to waters;
- (e) will reasonably conserve natural beauty;
- (f) will reasonably avoid problems associated with flood plain development or use;
- (g) Access from shore shall be developed on soils appropriate for such use and constructed so as to reasonably control erosion or sedimentation on both subject and surrounding properties.
- (h) The use shall not unreasonably interfere with beach areas.
- (i) The facility shall be located so as to minimize adverse effect on marine harvesting and commercial fishing.
- (j) The facility shall be located so as not to interfere with commercial or recreational boating and moorings.

(5) **Conditions of Approval**

The Board may attach conditions to its approval of a special exception permit. These conditions may include, but are not limited to, such requirements as:

- (a) street improvements;
- (b) access restrictions;
- (c) hours of use;
- (d) buffering and screening;
- (e) utility improvements;
- (f) performance guarantees for off-site improvements required as conditions of approval.

(6) **Reapplication**

If the Zoning Board of Appeals shall deny a special exception permit, a second request of a similar nature shall not be brought before the Board within two years from the date of the first request, unless in the opinion of the majority of the Board, substantial new evidence can be brought forward, or unless the Board finds that an error of law or misunderstanding of facts has been made, or unless amendment to the zoning ordinance has changed the status, circumstances, or conditions of the matter which was brought before the Board.

(7) **Duration of Special Exception Permit**

- (a) Provided all conditions and standards of approval are met, a special exception permit shall be a permanent grant of permission and shall "run with the land."
- (b) A use granted by special exception may be expanded in area or function only with the granting of a new special exception by the Zoning Board of Appeals.

(8) **Scope of Permit**

Any permit or approval granted hereunder is subject to all elements of the final plans and specifications submitted by the applicant and to all representations, oral or written, made by or on behalf of the applicant in support of the application or with respect to the nature and scope of the use, activity or work proposed, and all such permits or approvals shall include, as an express condition, a written statement to said effect.

(9) **Special Criteria for Low Impact Uses**

A low impact use, as defined in this Ordinance, shall:

- (a) Be located within a building that also includes one or more dwelling units;
- (b) Occupy no more than 2,000 square feet of total floor area;
- (c) Not cause an existing building, whether or not actually occupied by a dwelling unit, to be demolished for the purpose of creating a low impact use;
- (d) Generate no more than a daily average of 20 vehicular trip ends on week days, based on a data contained in the latest edition of "Trip Generation," published by the Institute of Traffic Engineers, or, if the Code Enforcement Officer is unable to classify the proposed activity into one of the uses listed in this reference work, based on the written opinion of a professional traffic engineer;
- (e) Have no more than one curb cut, which shall have a maximum width of 20 feet;
- (f) Require, in addition to the required number of spaces for the dwelling unit(s), no more than five parking spaces, based on the requirements of Article X, Part II, Section 4 or, if the type of use cannot be classified as one of the uses listed in Section

4, based on the average rates per 1,000 square feet of building area for peak parking spaces occupied as identified in the latest edition of "Parking Generation," published by the Institute of Transportation Engineers;

- (g) Locate any on-site parking to the rear or side of the building, with no such parking between the building and any street or in the lot's required front yard;
- (h) Maintain a vegetated buffer between its on-site parking lot and adjacent properties in compliance with Article X, Part II, Section 3, Screening and Landscaping.
- (i) Not generate hourly sound levels resulting from routine operations in excess of 60 dBA as measured at the property line;
- (j) Not be open for business before 7 a.m. or after 8 p.m.;
- (k) Comply with the sign regulations of Article XI of this Ordinance relating to residential districts;
- (l) Neither make nor receive shipments in trucks more than 5 times a week;
- (m) Store materials or display or sell goods only within a fully enclosed building;
- (n) If new construction is involved, achieve a residential appearance, including a roof pitch of at least six in 12 (or 50 percent) and the use of exterior materials typical of residences in the area.

## **Section 5. Variances**

### **(1) Purpose and Applicability**

The purpose of a variance is to allow an applicant to exceed a space and bulk standard or a performance standard under the very limited circumstances set forth in this Section. A variance is authorized only for the space and bulk standards of the district regulations and for the performance standards of this Ordinance. A variance shall not be granted to allow a use or an expansion of a use not otherwise permitted in the district.

### **(2) Application for Variance**

Application for a variance shall be made to the Code Enforcement Officer on forms provided for that purpose, accompanied by a fee as the Board of Selectmen shall set on an annual basis for such applications. The application shall clearly state the location of the property, the relief sought, and the reason(s) for requesting the variance.

### **(3) Standards**

Prior to voting to grant a variance, the Zoning Board of Appeals shall review the application and find that the following standards have been met:

- (a) That a literal interpretation of the requirement of this Ordinance will impose an undue hardship on the property owner. The term "undue hardship" shall mean specifically that:
  - (i) the land in question cannot yield a reasonable return unless a variance is granted;
  - (ii) the need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood;
  - (iii) the hardship is not the result of action taken by the applicant or a prior owner; and
  - (iv) the granting of the variance will not alter the essential character of the locality.

- (b) Notwithstanding the requirement set forth in subparagraph (a)(i) above, that the applicant show that the land in question cannot yield a reasonable return unless a variance is granted, the Zoning Board of Appeals may grant a variance for setbacks for single family detached dwellings if it finds that the application meets the standards contained in subparagraphs (a)(ii) through (a)(iv) and in addition finds that:
- (i) the granting of the variance will not substantially reduce or impair the use of abutting property;
  - (ii) the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available;
  - (iii) the dwelling for which the variance is sought is the primary, year-round residence of the applicant;
  - (iv) the variance will not exceed 20 percent of the required setback; and
  - (v) the variance will not cause the area of the dwelling to exceed the maximum permissible building coverage.
- (c) The Board may grant a variance without making a finding of undue hardship to a property owner for the purpose of making the property accessible to a person with a disability who is living on the property. Any such variance granted shall be restricted solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. For the purposes of this paragraph, a disability has the same meaning as a physical or mental handicap under M.R.S.A. Title 5, Section 4553, namely, any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness, and includes the physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist, as well as any other health or sensory impairment that requires special education, vocational rehabilitation, or related services.
- (d) Any variance granted by the Zoning Board of Appeals shall be the minimum variance from the terms of the Ordinance that will relieve the hardship pleaded.

(4) **Variance in Shoreland Areas**

Prior to voting to grant a variance within the mandated shoreland area, the Zoning Board of Appeals shall, in addition, find that the proposed variance:

- (a) will not result in unsafe or unhealthful conditions;
- (b) will not result in unreasonable erosion or sedimentation;
- (c) will not result in water pollution;
- (d) will not result in unreasonably damaged spawning grounds, fish, aquatic life, bird and other wildlife habitat;
- (e) will reasonably conserve shoreland vegetation;
- (f) will reasonably conserve visual points of access to waters as viewed from public facilities;
- (g) will reasonably conserve actual points of public access to waters;
- (h) will reasonably conserve natural beauty; and
- (i) will reasonably avoid problems associated with flood plain development and use.

(5) **Conditions of Approval**

The Zoning Board of Appeals is empowered to impose such conditions on its approval of a variance as are necessary in its judgment, to protect surrounding property owners or the Town from adverse impacts resulting from the variance.

(6) **Recording of Variance**

If the Zoning Board of Appeals grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared by the applicant in recordable form. This certificate must be recorded by the applicant at the applicant's expense in the Knox County Registry of Deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided herein.

(7) **Reapplication**

If the Zoning Board of Appeals shall deny a variance, a second request of a similar nature shall not be brought before the Board within two years from the date of the first request, unless in the opinion of the majority of the Board substantial new evidence can be brought forward, or unless the Board finds that an error of law or misunderstanding of facts has been made, or unless amendment has been made to the Zoning Ordinance which changes the status, circumstances, or conditions of the matter which was appealed.

(8) **Duration of Variance**

Provided all conditions and standards of approval are met, a variance shall be a permanent grant of permission and shall "run with the land."

**Section 6. Standards for Request to Exceed Standards Set Forth in Article VII, Section 3(5) of the Zoning Ordinance**

A request to exceed the standards of a home occupation that concerns the number of employees, traffic generated, and percentage of floor area shall be granted only in the event that the applicant has established to the satisfaction of the Zoning Board of Appeals that:

- (a) The home occupation is located wholly within structures existing as of March 12, 1985; and,
- (b) The standards of Article VII, Section 4(3) Special Exceptions, have been met.