

**BY-LAWS OF THE ZONING BOARD
OF APPEALS
CITY OF WESTBROOK**

I. GENERAL PROVISIONS:

- A. Business of the Board shall be conducted in accord with Maine Statutes, City Ordinances, and Robert's Rules of Order.
- B. It shall be responsibility of the Board to become familiar with all the duly enacted ordinances of the city which it may be expected to act upon as well as with the applicable state statutes.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires, and policies as expressed in a "comprehensive plan", if any, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.

II. OFFICERS AND DUTIES:

- A. The officers of the Board shall consist of a Chair and Vice Chair who shall be elected annually by the Board.
- B. CHAIR. The Chair shall perform all duties required by law and these by-laws and preside at all meetings of the Board. The Chair shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chair shall appoint any committees found necessary to carry out the business of the Board.
- C. VICE CHAIR. The Vice Chair shall serve in the absence of the Chair and shall have all the powers of the Chair during the Chair's absence, disability or disqualifications.

III RECORDS

The following shall constitute the official records of the Board:

- A. Minutes of all Board proceedings, showing the vote of each present member upon every question.
- B. Proper and legal notice of hearings
- C. Correspondence of the Board
- D. All resolutions, transactions, correspondence, findings and determinations of the Board.
- E. A complete record of each hearing, including date(s), time(s), place(s), of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the

testimony presented; findings of fact and conclusions; the decision of the Board; and the date of issuance of the decisions.

All records are public and may be inspected at reasonable times.

IV. CONFLICT OF INTEREST:

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 whose potential conflict is under consideration.

The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (grandfather, father, wife, son, grandson, e.g.) or to his employer or the employer of any member of the person's immediate family.

Board members shall also be prohibited from presenting a case or an appeal to the full Board on behalf of themselves or interested parties, except that a board member may present an appeal or application concerning property owned by that board member.

V. MEETINGS:

- A. The regular meetings of the Board shall be held once a month or as necessary upon sufficient public notice. Meetings need not be scheduled if there is no business for the Board to act upon.
- B. The annual organization meeting of the Board shall be first regular meeting of the year.
- C. Special meetings of the Board may be called by the Chair. At least forty-eight (48) hours written notice to any participating parties of the time, place, and business of the meeting shall be given each member of the Board, any participating parties, the Code Enforcement Officer, the Mayor, City council, and to the local media.
- D. The Chair shall call a special meeting within ten (10) days of receipt of a written request from any three (3) members of the Board, or the Municipal Officers, which request shall specify the matters to be considered at such special meeting.
- E. The order of business at regular meetings of the Board shall be as follows: (A) roll call; (B) approval of the minutes of the preceding meeting(s); (C) action on old business; (D) new business (when scheduled); (E) other business; (F) adjournment.
- F. All meetings of the Board shall be open to the public, except executive sessions which may be called by a publicly recorded 3/5 vote of the members present and voting. Such a motion to go into executive session shall indicate the business to be considered. No other matters may be considered during that session. No votes may be

taken by the Board except in Public Meeting. The Board shall not hold executive sessions except for consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the town or Board at a substantial disadvantage. A motion to go into executive session shall substantially comply with the following language: Move that the Board go into executive session, pursuant to the provisions of 1 M.R.S.A. § 405(6) (E), to discuss with the City Attorney the Board's legal rights and duties concerning (include name of litigation or name of pending application).

VI. VOTING:

- A. A quorum shall consist of three (3) members of the Board.
- B. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present, shall be entitled to request the Chair to call a special meeting for a subsequent date.
- C. All matters shall be decided by a roll call vote. Decisions on variance requests shall require the affirmative vote of a majority of the entire membership of the Board unless otherwise specified herein. Other matters will require a majority vote of those members present and voting.
- D. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
- F. If the Board has alternate members, the Chair shall appoint an alternate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member until the case is decided.
- G. If the Board has no alternate members, no regular member shall vote on the determination of any matter requiring public hearing unless he has attended the public hearing, thereon; however, where such a member has familiarized himself with such matter by reading the record, he shall be qualified to vote.

VII . HEARINGS:

- A. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- B. The order of business at a public hearing shall be as follows:

1. The Chair calls the hearing to order.
2. The Chair determines whether there is a quorum.
3. The Chair gives a statement of the case and reads all correspondence and reports received.
4. The Board determines whether it has jurisdiction over the appeal.
5. The appellant is given the opportunity to present his or her case without interruption.
6. The Board and others present may ask questions of the appellant through the Chair.
7. The others present are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
8. The appellant may ask questions of others present through the Chair and may offer any rebuttal testimony or evidence.
9. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
10. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.
11. Unless otherwise requested by the Board no written evidence will be accepted by the Board after the close of the Public Hearing.
12. The Board may waive any of the above rules upon good cause shown.

VIII. DECISIONS:

- A. The final decision on any matter before the Board shall be made by written order signed by the Chair or the Chair's designee. The transcript of the testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.
All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- B. The Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan, and by the Findings of Fact by the Board in each case.

- C. In reviewing an application on any matter, the standards in any applicable local ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- D. Notice of any decision shall be sent by mail or hand delivered to the applicant, his representative or agent, the Planning Board, the Code Enforcement Officer, and the Municipal Officers within seven (7) days of the decision.
- E. Decisions of the Board shall be immediately filed with the minutes in the office of the City Clerk and shall be made public record. The date of filing of each decision shall be entered in the official record and minutes of the Board.

IX. AMENDMENTS:

- A. These By-Laws may be amended by a majority of the Board.
- B. The invalidity of any section or provisions of these By-Laws shall not be held to invalidate any other section of provisions of the By-Laws.

ADOPTED BY THE
BOARD OF APPEALS

2-04-09
(Dated)