

a single-family dwelling through the Minor Development Review process if the Staff Review Committee issues a Special Exception, finding that the applicant has demonstrated that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the SPO District, where the structure can be built;
- (2) The lot was established and recorded in the Cumberland County Registry of Deeds prior to June 6, 1994 or December 31, 2008 as applicable based on the description provided at Subsection 5.2.6.C;
- (3) All proposed buildings, sewage disposal systems and other improvements are
 - a. Located on natural ground slopes of less than 20 percent; and
 - b. Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be one-half (.5) the width of the 100-year floodplain.
- (4) All buildings, including basements, are elevated at least one (1) foot above the 100-year floodplain elevation, and the development is otherwise in compliance with any applicable floodplain management regulations in Subsection 2.3.4 (Flood Protection Overlay (FPO) District).
- (5) The total footprint areas defined, of all principal and accessory structures is limited to a
 - (5) maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (6) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body or upland edge of a coastal or freshwater wetland to the greatest extent practicable, but not less than a horizontal distance of 75 feet from a stream and not less than a horizontal distance of 125 feet from a coastal or freshwater wetland or other water body. In determining the greatest extent practicable the Staff Review Committee shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.
- (7) A Special Exception shall expire one (1) year from the date of issuance if on-site construction has not started during that period. If construction is started within one (1) year from the date of permit issuance, the applicant shall have one (1) additional year from the date of issuance to complete the project. If incomplete at the end of two (2) years, the permit shall expire.

5.2.7. Appeals of Administrative Decisions and Variances

A Appeals of Administrative Decisions

(1) Making an Appeal

- a. Administrative appeals from written decisions of the Codes Enforcement Officer, Planning Board or Village Review Board shall be taken to the Zoning Board of Appeals no later than 30 days after the decision is rendered. Dimensional variance appeals do not require a prior decision of the Codes Enforcement Officer or a board and are not

subject to this time limit.

- b. The appeal shall be made by filing in the Office of the Codes Enforcement Officer a written notice of appeal specifying the grounds for such appeal. For an appeal seeking a Variance, the applicant shall submit a sketch drawn to scale or photograph showing lot lines, location of existing buildings and other physical features pertinent to the Variance request, and a concise written statement stating what Variance is requested.
- c. Upon being notified of an appeal, the Codes Enforcement Officer, the Planning Board or Village Review Board, as the case may be, shall transmit to the Zoning Board of Appeals all of the documents constituting the record of the decision appealed from. Each appeal shall be accompanied with the fee designated by the Town Council.
- d. A copy of each Variance request located in the Shoreland Protection Overlay (SPO) district, including the application and all supporting information supplied by the applicant, shall be forwarded by the Codes Enforcement Officer to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Zoning Board of Appeals (*amended 8/6/18*). Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.

(2) Procedure on Appeal

- a. The Zoning Board of Appeals shall have the power to hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board or the Village Review Board in the administration of this ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this ordinance. The Zoning Board of Appeals shall hold a public hearing on the appeal within 45 days after the filing of the appeal.
- b. At least ten (10) days prior to the date set for hearing, the Board shall give similar written notice to all property owners of record as required in Subsection 5.1.3.B(1), the person making the appeal, and the Codes Enforcement Officer, Planning Board, or Village Review Board (whichever made the decision being appealed), and any other person requesting notice. The notice will be sent via U.S. Mail, postage prepaid, to those persons as listed on the Town's tax records. Failure of any property owner to receive a notice shall not necessitate another hearing or invalidate any action by the Zoning Board of Appeals.
- c. At least seven (7) days prior to the date of the hearing on such appeal, the Zoning Board of Appeals shall cause to be published in one (1) issue in a newspaper of general circulation in Brunswick a notice which includes, the name of the person appealing, a brief description of the property involved, including the street address, a brief description of the decision appealed from, or the nature of a Variance, and the time and place of the Zoning Board of Appeals' hearing.

(3) Hearings

- a. In hearing an appeal from a decision of the Planning Board or Village Review Board, the Zoning Board of Appeals shall:
 - ix. Examine all application documents, Ordinance requirements and Findings of

Fact and Conclusions prepared by the Board whose decision is being appealed.

- ii. Determine on the basis of the entire record presented whether they could reasonably have found the facts and reached the conclusions upon which the decision under appeal was based.
 - iii. Take no new evidence unless it is determined by a majority of the Board present and voting that additional evidence is required for clarification of the record.
 - iv. Determine whether the decision being appealed was based on substantial evidence.
 - v. Not substitute the judgment of the Zoning Board of Appeals for the judgment of the Board whose decision is under appeal.
 - vi. If the Zoning Board of Appeals finds that the Board was not erroneous in its review of the application, the original determination shall be upheld.
- h. The Zoning Board of Appeals may find that all or portions of the decision were faulty, in which case the Board may remand that portion of the application to the Planning Board or Village Review Board for reconsideration, with recommendations that the Board make additional Findings of Fact and conclusions to enable the Zoning Board of Appeals to complete its evaluation of the appeal. In the case of a remand, the appeal before the Zoning Board of Appeals shall remain pending until Board whose decision is on appeal acts on the remand and reports its action to the Zoning Board of Appeals, which shall then make a final decision on the appeal. The decision of the Zoning Board of Appeals to remand is not final action by the Zoning Board of Appeals and is not appealable to Superior Court.
- c. In hearing an appeal from a decision of the Codes Enforcement Officer, the Zoning Board of Appeals shall:
- i. Receive and consider new evidence and testimony, be it oral or written.
 - ii. Hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.
- d. At a hearing on any appeal, 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 of the Board. All persons at the hearing shall abide by the order of the Chair.
- e. At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause and by agreement of applicant.
- f. If a party does not attend a hearing and is not otherwise represented, its case will be deemed to have been withdrawn without prejudice to refile the appeal. The filing fee will not be refunded to any applicant whose appeal is withdrawn in this manner.
- g. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

(4) Decisions of the Zoning Board of Appeals

- a. The concurring vote of a majority of the required quorum of five (5) members of the Zoning Board of Appeals shall be necessary to:
 - i. Reverse any order, requirement, decision, or determination of the Codes

Enforcement Officer, Planning Board or Village Review Board;

- ii. Grant a Variance; or
 - iii. Decide in favor of the applicant on any matter which the Board is required to decide under this Ordinance.
- b. The Zoning Board of Appeals shall decide all appeals within at least 30 days after hearing, unless the Board and the applicant agree to a longer time, and shall issue a written decision on all appeals.
- c. 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, on all the material issues of fact, law or discretion presented, and the order, relief or denial. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Codes Enforcement Officer, Planning Board, or Village Review Board (whichever made the decision appealed from) and the Town Council within seven (7) days of the decision date.
- d. For appeal of a decision related to a development located in the Shoreland Protection Overlay (SPO) district, the Zoning Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Zoning Board of Appeals shall be given to the Planning Board, Codes Enforcement Officer, and the Town Council.
- e. A Variance granted by the Zoning Board of Appeals shall expire if the work or change involved is not completed within two (2) years of the date on which the Variance is granted.
- f. All Variances granted by the Zoning Board of Appeals shall be recorded in the Cumberland County Registry of Deeds in accordance with Title 30-A M.R.S. Section 4353(5), as amended.
- g. Once an appeal has been denied, a second appeal of a similar nature with regard to the same building or property may not be brought to the Board within six (6) months.
- h. The Zoning Board of Appeals may reconsider any decision within 45 days of its prior decision, in accordance with 30-A M.R.S. § 2691(3)(F), as amended. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being 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. Reconsideration of a decision shall require a positive vote of a majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Village Review Board, Codes Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearings(s). The Board may conduct additional hearings and receive additional testimony.
- i. Appeals may be taken as permitted by law as provided in 30-A M.R.S. § 2691(3)(G), from any decision of the Zoning Board of Appeals to Superior Court.

B. Variances

(1) General Variance

A Variance may be granted by the Zoning Board of Appeals for the following provisions

of this Ordinance.

- a. Any dimensional requirement in Section 4.2 (Dimensional and Density Standards) including the setback for a single family dwelling, but not including an increase in allowed density.
- b. Any dimensional requirements in Section 3.4 (Supplementary Use Standards); however, a Variance cannot be granted to allow a use that is not a Permitted Use in the zoning district where the property is located, or to allow a Conditional Use without a Conditional Use Permit pursuant to Subsection 0, or to allow an Unclassified or Omitted Use without a Special Permit pursuant to Subsection 5.2.3. Variances shall not be granted for establishment of uses otherwise prohibited by this Ordinance.
- c. A change to a property containing a dwelling to make that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling (Disability Variance).

(2) General Criteria for Approval

Unless subsection c below applies, the Zoning Board of Appeals shall not grant a Variance pursuant to Subsections 5.2.7.B(1)a and 5.2.7.B(1)b unless it finds that strict application of this Ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- a. That the land in question cannot yield a reasonable economic return unless a Variance is granted; and
- b. The need for a Variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
- c. The granting of a Variance will not alter the essential character of the locality; and
- d. The hardship is not the result of action taken by the applicant or a prior owner.

(3) Setback Variance for Single Family Dwellings

- a. The Zoning Board of Appeals may grant a set-back Variance for a single family dwelling only when strict application of this Ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
 - i. The need for a Variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - ii. The granting of a Variance will not alter the essential character of the locality.
 - iii. The hardship is not the result of action taken by the applicant or a prior owner.
 - iv. The granting of the Variance will not substantially reduce or impair the use of abutting property.
 - v. The granting of the Variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
 - vi. Under this Subsection, the Zoning Board of Appeals may only grant a Variance from a setback requirement for a single family dwelling that is the primary year-round residence of the applicant. A Variance under this Subsection may not exceed 20% of a setback requirement and may not be

granted if the Variance would cause the area of the dwelling to exceed the maximum permissible impervious coverage, provided, however, a Variance under this Subsection may exceed the 20 percent of a setback requirement (except for the minimum setbacks from a wetland or a water body required within the Shoreland Protection Overlay District by rules adopted pursuant to M.R.S. Title 38, Chapter 3, Subchapter I, Article 2-B, as amended), if the applicant has obtained the written consent of an affected abutting landowner.

(4) Criteria for Approval of a Disability Variance

- a. The Zoning Board of Appeals shall not grant a Variance pursuant to Subsection 5.2.7.B(1)c. unless it finds that all of the following criteria have been met:
 - i. The Variance is necessary to make a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling.
 - ii. The Variance only permits the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. For the purposes of this Subsection, a disability has the same meaning as a physical or mental handicap under Title 5 M.R.S. § 4553, as amended, and 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.
- b. The Zoning Board of Appeals may impose conditions on the Variance, including limiting the Variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

(5) Criteria for Approval of a Disability Variance for Vehicle Storage

- a. The Zoning Board of Appeals shall not grant a Variance pursuant to Subsection 5.2.7.B(1)c. for this purpose unless it finds that all of the following criteria have been met:
 - i. The Variance is necessary for the owner of a dwelling who resided 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.
 - ii. The width and length of the structure may not be larger than two (2) times the width and length of the noncommercial vehicle.
 - iii. The owner shall submit proposed plans for the structure with the request for the Variance pursuant to this paragraph to the Zoning Board of Appeals.
 - iv. The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
 - v. For the purposes of this Subsection 5.2.7.B(1)c, "noncommercial vehicle" means a motor vehicle as defined in Maine Statutes Revised, 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. For purposes of this Subsection, "disability" has the same meaning as a physical or mental disability under Maine Statutes Revised Title 5, Section 4553-A.
- b. The Zoning Board of Appeals may impose conditions on the Variance, including limiting the Variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

(6) Additional Criteria for Variances in the SPO and FPO Districts

- a. In addition to meeting the criteria in Subsection 5.2.7.B.(2) a. through d., above, as applicable, an application for a Variance on property located in the SPO District shall meet the following additional requirements:
 - i. The Board shall make a positive finding for each of the following additional criteria, where applicable:
 - (A) Will not result in unsafe or unhealthful conditions;
 - (B) Will not result in erosion or sedimentation;
 - (C) Will not result in water pollution;
 - (D) Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat
 - (E) Will conserve shoreland vegetation;
 - (F) Will conserve visual points of access to waters as viewed from public facilities;
 - (G) Will conserve actual points of public access to waters;
 - (H) Will conserve natural beauty; and
 - (I) Will avoid problems associated with the floodplain development and use, such as erosion, increased risk of flood damage to upstream properties or increased flood damage.
- b. In addition to meeting the criteria in Subsection 5.2.7.B.(2) a. through d., as applicable, an application for a Variance on property located in the FPO District shall meet the following additional requirements:
 - i. Within any designated regulatory floodway will not result in an increase in flood levels during the base flood discharge;
 - ii. Is supported by good and sufficient cause;
 - iii. Will not result, should a flood comparable to the base flood occur, in increased flood height, additional threats to public safety, public expense or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or Ordinances;
 - iv. Will not cause a conflict with other State, Federal or local laws or Ordinances; and,
 - v. Variances shall only be issued upon a determination that the Variance is the minimum necessary, considering the flood hazard, to afford relief, and the Zoning Board of Appeals may impose such conditions to a Variance as it deems necessary.
 - vi. If the Variance is for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety, and other criteria of Subsections 5.2.5.C and 2.3.4 are met.
 - vii. If the Variance is for the repair, reconstruction, rehabilitation, or restoration of

Historic Structures, the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure, the Variance is the minimum necessary to preserve the historic character and design of the structure, and the development meets the criteria of Subsection 5.2.7.B(2).

- c. Any applicant who meets the criteria of Subsection 5.2.7.B(2) and this Subsection shall be notified by the Zoning Board of Appeals in writing that:
 - i. The issuance of a Variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 - ii. Such construction below the base flood level increases risks to life and property; and,
 - iii. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the Town against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the Town from any claims the applicant may have against the Town that are related to the use of land located in a floodplain. A statement to this effect shall be a matter of record in an instrument to be recorded by the applicant in the Cumberland County Registry of Deeds within 30 days of approval by the Zoning Board of Appeals.

5.2.8. Village Review Overlay Design Review

A Application for Certificate of Appropriateness

Application forms for a Certificate of Appropriateness shall be made available in hard copy or online by the Department of Planning and Development. Completed applications shall be submitted to the Department of Planning and Development staff with the following information provided:

- (1) Name, address and interest in the property.
- (2) Location and nature of the proposed activity.
- (3) A brief description of the proposed construction, reconstruction, alteration, relocation or demolition and proposed reuse. The description shall include the reason for the request, and must demonstrate how the proposal is in compliance with Subsection 5.2.8.C.
- (4) Drawings illustrating the design, texture, and location of any construction, alteration, or demolition/relocation for which a certificate is required. The drawings shall include plans and exterior elevations drawn to scale, with sufficient detail to show their relation to exterior appearances and the architectural design of the building. Proposed materials and textures shall be described, including samples where appropriate. Drawings need not be prepared by an architect or engineer, but shall be clear, complete, and specific.
- (5) Photographs of the building(s) involved and of immediately adjacent properties. Staff shall provide completed historic building/structure survey forms if available for the structure. For demolition or relocation applications, interior and exterior photographs shall be provided clearly indicating the existing condition of the structure and, if available, the structural condition at the time of purchase by the applicant.
- (6) A site plan showing the relationship of proposed changes to walks, driveways, signs,