

**Board of Appeals Ordinance
Industry, Maine**

1. Establishment

Pursuant to Title 30-A M.R.S.A. Section 3001, Title 30-A M.R.S.A. Section 2691 and Title 30-A M.R.S.A. Section 4353 the Town of Industry hereby establishes the Industry Board of Appeals.

2. Appointment

- A. Board members shall be appointed by the municipal officers and sworn into office by the clerk or other person authorized to administer oaths before performing any official duties as a Board member.
- B. The Board shall consist of five (5) members with a quorum consisting of three (3) members.
- C. The term of each member shall be five (5) years. Terms shall run from July 1st through June 30.
- D. The municipal officers may appoint two (2) associate members to the Board. The Chairperson shall designate which shall serve in place of an absent member(s).
- E. Neither a municipal officer nor a spouse of a municipal officer may be a member or associate member of the Board.
- F. Any member of the Board may be removed from the Board, for cause, by the municipal officers before expiration of his/her term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend three (3) consecutive Board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest".
- G. When there is a permanent vacancy of either a full or associate member, the Secretary shall immediately notify the Town Clerk. The municipal officers shall within 60 days appoint a person to serve the unexpired term.
- H. All members shall be legal residents of the Town of Industry.

3. Officers and Duties

- A. The officers of the Board shall consist of a Chairperson, Vice-Chairperson and Secretary, who shall be elected annually by a majority of the Board.
- B. CHAIRPERSON. The chairperson shall perform all duties required by law and this ordinance and preside at all meetings of the Board. The Chairperson 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 chairperson shall appoint any committees found necessary to carry out the business of the Board.

- C. VICE-CHAIRPERSON. The Vice-Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson’s absence, disability or disqualification.
- D. SECRETARY. The Secretary, subject to the direction of the Board and the Chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indication such fact. The Secretary shall also arrange proper and legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and shall prepare 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 decision. All records are public and may be inspected at reasonable times.

4. CONFLICT

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.

5. POWERS AND LIMITATIONS

- A. The Board shall have the following powers to be excised only upon receipt of a written appeal by an aggrieved party.
 - 1. The Board may interpret the provisions of applicable town ordinances which are called into question when such ordinance grants the Board authority to do so.
 - 2. The Board may hear administrative appeals relating to local ordinances when such ordinances grant the Board authority to do so.
 - 3. The Board may grant a variance provided for in town ordinances.
 - 4. The Board may hear an appeal from a licensee who has applied for a permit and has been denied a permit, or whose permit has been revoked or suspended for a Special Amusement Permit pursuant to Title 28-A M.R.S.A. Section 1054.

6. MEETINGS

- A. The Board shall hold a meeting each month or as necessary.
- B. The annual organizational meeting and election of officers shall be in the month of July.
- C. The order of business at meetings of the Board shall be as follows: (A) roll call; (B) reading and approval of the minutes of the preceding meetings; (C) action on held cases; (D) public hearing (when scheduled); (E) other business; (F) adjournment.

- D. All meetings of the Board shall be open to the public, except executive sessions. 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.

7. 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 chairperson to call a special meeting for a subsequent date.
- C. Decisions on any matter before the Board shall require the affirmative vote of a majority of the membership of the Board present and voting.
- D. A tie vote of 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 a matter.
- F. If associate members have been appointed, the Chairperson shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from an portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.
- G. If the Board has no associate members, no regular member shall vote on the determination of any matter requiring public hearing unless the members has attended the public hearing thereon; however, where such a member has familiarized himself with such matter by reading the record, reviewed tapes of the hearing and reviewed documents, he or she shall be qualified to vote upon preparing a sworn statement for the record to that effect.

8. APPEAL PROCEDURE

- A. A written application for an appeal shall be filed with the Code Enforcement Officer within the applicable time period as set out in the applicable ordinance. In the event no specific time period is provided, the application shall be filed within thirty (30) days of the action from which the appeal is taken. The application shall be on forms provided by the Code Enforcement Officer for that purpose and shall be addressed to the Board. A nonrefundable application fee of \$25.00 or as may be revised from time to time by the Selectmen to cover administrative costs and the costs of a hearing, shall accompany each application.
- B. The application for appeals shall contain the following information:
 - 1) Street address of the property in question;
 - 2) The legal name and address of the applicant;
 - 3) The legal name and address of the owner of the property involved;
 - 4) The legal name and address of the applicant for any permit which is the subject of the

appeal, if different from the owner;

- 5) Description of the property in question;
- 6) Applicant's description of what is intended to be done;
- 7) A drawing, which is substantially to scale, of the site, showing existing and proposed buildings, roads, drives, parking areas and utilities, the actual relationship of these facilities to each other and the boundaries of the parcel and the location of buildings.
- 8) A statement of the reason or reasons why the applicant believes the appeal should be granted:
- 9) If the appeal challenges the issuance of a permit, a description of the permit which was issued.

- C. Upon being notified of an appeal, the Code Enforcement Officer, Planning Board, or Municipal Officers, as appropriate, shall transmit to the Board all of the papers constituting the record of the decision appeal from.

9. HEARINGS:

- A. The Board shall schedule a public hearing on all appeal applications within thirty-five (35) days of the filing of an appeal application.
- B. The Board shall cause notice of the date, time and place of the public hearing, the location of the building or lot, and general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in the municipality, at least two times, the date of the first publication to be at least seven days prior to the hearing. The Board shall also cause notice of the hearing to be given to the municipal officers, the Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least ten (10) days prior to the date of the hearing.
- C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The order of business at a public hearing shall be as follows:
 1. The Chairperson calls the hearing to order.
 2. The Chairperson determines whether there is a quorum.
 3. The Chairperson 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 Board decides whether the applicant has the right to appear before the Board.
 6. The Board determines which individuals attending the hearing are "interested parties." "Interested parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole if their interests or contentions are substantially similar

and such consolidation would expedite the hearing. Municipal Officers, the Planning Board, the Code Enforcement Officer shall automatically be made parties to the proceeding. Other persons attending the hearing and federal, state, municipal, and other governmental agencies shall be permitted to make oral or written statements and to submit oral and written questions through the Chair.

7. The appellant is given the opportunity to present his or her case without interruption.
 8. The Board and interested parties may ask questions of the appellant through the Chair.
 9. The interested parties are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
 10. The appellant may ask questions of the interested parties and Board witnesses directly.
 11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
 12. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
 13. 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.
- E. The Board may waive any of the above rules if good cause is shown.

10. DECISIONS

- A. Decisions by the Board shall be made not later than thirty-five (35) days from the date of the final hearing.
- B. The final decision on any matter before the Board shall be made by written order signed by the chairperson. The transcript of 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 therefor, upon all the material issues of fact, law of discretion presented and the appropriate order, relief or denial thereof.
- C. 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 Findings of Fact by the Board in each case.
- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.

- F. Notice of any decision shall be sent by mail 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.
- G. Decisions of the Board shall be filed in the Town Office and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- H. All variances granted shall be recorded by the applicant in the Registry of Deeds as required by Title 30-A M.R.S.A. Section 4353.5 Any variance not so recorded shall be void.
- I. A copy of all variances granted within the shoreland area as defined by the Town of Industry Shoreland Zoning Ordinance shall be submitted by the Code Enforcement Officer to the Department of Environmental protection within fourteen (14) days of the decision.

11. RECONSIDERATION

The Board of Appeals may reconsider any decision reached within 30 days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony. Such reconsideration should be for one of the following reasons.

- A. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based: or
- B. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

12. REAPPLICATION

If the Board denies an appeal, the applicant may not have an application seeking the same or similar relief heard within ninety (90) days of the denial unless the Board finds at a duly noticed public hearing, substantial new evidence has been brought forward or that an error of law or mistake of fact was made. If the Board so finds, the Board shall proceed to hear the second application on the merits. If the Board so finds, the second application shall be dismissed.

13. EFFECT OF GRANTING THE APPEAL

The granting of an appeal shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by ordinances. It shall not authorize the applicant to proceed with the project unless proper permits and approvals are obtained.

14. APPEAL TO SUPERIOR COURT

An appeal may be taken by any aggrieved party to Superior Court in accordance with State laws within 45 days from the date of any decision of the Board of Appeals.

15. REPEAL OF EXISTING BOARD OF APPEALS ORDINANCE

Adoption of this Ordinance shall repeal any and all previous Board of Appeals ordinances.

16. EFFECTIVE DATE

This Ordinance shall become effective when enacted by the legislative body of the Town of Industry.

17. VALIDITY AND SEVER SERVERABILITY

Should any action or provision of this Ordinance be declared by any court to be invalidate any other provision of this Ordinance.

18. AMENDMENTS

This Ordinance shall be amended in accordance with procedures specified in State law at any Town Meeting.