

CHAPTER 145.LAND USE

Article IX. Zoning Board of Appeals

§145-68. Considerations and conditions.

In hearing appeals under this chapter, the Zoning Board of Appeals shall consider the conformance of the proposed use and structures with the provisions of this chapter. In granting appeals under this chapter, the Zoning Board of Appeals may impose such reasonable conditions as it deems necessary to fulfill the intent and purpose of this chapter.

§145-69. Appeal procedure.

A. In all cases, a person aggrieved by a decision of the Code Enforcement Officer shall file an appeal within 31 days after the issuance of the written decision from the Code Enforcement Officer. The appeal shall be filed with the Zoning Board of Appeals on forms to be approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal. A filing fee as established by the Board of Selectmen, following notice and a public hearing, shall accompany any appeal. The Board shall also be reimbursed for the cost of the notification of the abutters before the public hearing.

B. Before taking action on any appeal, the Zoning Board of Appeals shall schedule a public hearing within 31 days of the filing of an appeal, and the hearing shall be publicly advertised 10 days before the specified date of such hearing. In the case of administrative appeals pursuant to § 145-67A (1), such hearing shall be held within 60 days of the filing of the appeal. The Zoning Board of Appeals shall notify by mail, at least 10 days before the hearing, the owners of lots butting the subject lot, of lots directly across a street or water body (less than 200 feet in width from the lot on which an appeal is taken and of lots located within 100 feet of the property lot on which the appeal is taken of the nature of the appeal and of the time and place of the public hearing thereon. **[Amended 4-18-1998; 4-12-2003]**

C. For this section, the owners of a lot shall be considered to be the parties listed by the Assessor of taxes for the Town of Wells as those against whom taxes are assessed. Failure of any lot owner to receive a notice of public hearing shall not necessitate another hearing nor invalidate any action by the Zoning Board of Appeals.

D. The Zoning Board of Appeals shall notify the Code Enforcement Officer, Board of Selectmen and Planning Board of the appeal at least 14 days before the hearing.

E. Written notice of the decision of the Zoning Board of Appeals shall be sent to the appellant, his representative or agent, the Code Enforcement Officer, the Maine Department of Environmental protection (if the subject property is locate within the Shoreland Overlay District or Resource Protection District), the Board of Selectmen and the planning Board within seven days of the decision. The decision shall be deemed rendered at the time the Board shall vote thereon.

F. The Code Enforcement Officer or the designated assistant shall attend all hearings may present to the Zoning Board of Appeals all plans, photographs or other material needed to understand the appeal.

G. The petitioner's case shall be heard first. To maintain an orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman. The concurring vote of a majority of the members of the Zoning Board of Appeals present and voting shall be required to reverse and order, requirement, decision, or determination of the Code Enforcement Officer, to grant a variance, to grant a mislocated building appeal, to permit roads and driveways in the Resource Protection District and in the Shoreland Overlay District, to permit additional off-premises business directional signs, or to decide in favor of the applicant on any matter which the Zoning Board of Appeals is required to decide under this chapter. The applicant shall have the burden of proof. The Zoning Board of Appeals may modify or reverse a decision of the Code Enforcement Officer only if it finds an error of law, misinterpretation of this Code or misapplication of the law to the facts. If the Zoning Board of Appeals modifies or reverses a decision of the Code Enforcement Officer, the Zoning Board of Appeals shall remand with instructions for such further action as may be necessary. The Zoning Board of Appeals may receive and consider evidence and testimony and oral or written argument; however, the Chairperson may exclude any irrelevant or redundant testimony or other evidence. **[Amended 4-12-2003]**

H. If the Zoning Board of Appeals shall deny an appeal, a second appeal of similar nature shall not be brought before the Board within one year from the date of denial by the Board of the first appeal, unless in the opinion of a majority of the Board substantial new evidence shall be brought forward or unless the Board finds that an error, mistake or misunderstanding of facts has occurred.

I. Any appeals granted under the provisions of this chapter by the Zoning Board of Appeals shall expire if:

(1) The work or change involved is not started within one year of the date on which the appeal is granted and /or if the work or change is not substantially completed within two years of the date on which the appeal is granted unless otherwise specifically provided for by the Zoning Board of Appeals; and

(2) A certificate indicating the name of the current lot owner, identifying the lot by reference to the last recorded deed in its chain of title and indicating that a variance has been granted, including any conditions on the variance and the date the variance was granted, is not recorded at the York County Registry of Deeds within 90 days of the final written approval.

J. Appeal of Board's decision. Any decision of the zoning Board of Appeals may be appealed to Superior Court within 45 days after the decision is rendered according to the Maine Rules of Civil Procedure, Rule 80B.