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CHAPTER 102, ZONING
ARTICLE II. ADMINISTRATION
DIVISION 4. APPEALS AND VARIANCES

Sec. 102-136 through Sec. 102-160. (Reserved)

Sec. 102-131 Establishment and jurisdiction of Zoning Board of Appeals.

The Zoning Board of Appeals is established by the charter and members are appointed by the City Council. The board shall hear administrative appeals and grant variances as provided in this division.

Sec. 102-132 Powers of Zoning Board of Appeals.

- (a) The Zoning Board of Appeals shall review administrative appeals from final written decisions of the code enforcement officer, the In-Town Design Review Committee, and/or the Planning Board. All administrative appeals from decisions relating to interpretation and operation of the following chapters shall be made directly to the Zoning Board of Appeals:
1. Chapter 74, Building and Building Regulations.
 2. Chapter 78, Floods.
 3. Chapter 80, In-Town Design Review. Reference specific requirements of Chapter 80, In-Town Design Review, with respect to how relief can be granted via an administrative appeal.
 4. Chapter 82, Shoreland.
 5. Chapter 86, Signs, the City Sign Ordinance.
 6. Chapter 90, Site Plan.
 7. Chapter 94, Subdivisions, the City Subdivision Ordinance.
 8. Chapter 98, Technical Standards.
 9. Chapter 102, Zoning.
- (b) The Zoning Board of Appeals may grant an undue hardship variance, a disability variance or practical difficulty variance in strict compliance with provisions of this chapter. The Zoning Board of Appeals may also grant a certificate of economic hardship for a Type 1 mandatory in-town design review permit issued by the In-Town Design Review Committee; reference Chapter 80, In-Town Design Review, Article III.
- (c) In deciding any appeal, the Zoning Board of Appeals may interpret the provisions of this chapter which are called into question.

Sec. 102-133 Variances.

- (a) Undue hardship variance. A variance may be granted by the Zoning Board of Appeals only where strict application of this chapter, or a provision thereof, to the petitioner and his property would cause undue hardship. An undue hardship variance is authorized only for dimensional requirements and performance standards that apply to a use in question. A variance shall not be granted to allow a use or an expansion of a use not otherwise permitted in a zoning district. The term "undue hardship," as used in this subsection, means:
- (1) The land in question cannot yield a reasonable return unless a variance is granted;
 - (2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (3) The granting of the variance will not alter the essential character of the locality; and
 - (4) The hardship is not the result of an action taken by the applicant or a prior owner.

- (b) Disability variances. Notwithstanding the provisions of section 102-133(a) the Zoning Board of Appeals may grant a variance to a property owner for the purpose of making that property accessible to a person with a physical or mental disability who is living on the property. The board shall restrict any variance granted under this subsection 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. The board 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 on the property. For the purposes of this subsection, the terms "physical or mental disability" and "persons with a disability" are as defined under 5 M.R.S.A. § 4553.
- (c) Practical difficulty variance. Notwithstanding the provisions of subsections (a) and (b) the zoning board of appeals may grant a variance from the dimensional standards stipulated in chapter 102, Zoning, when strict application of the provisions of the subsections would create a practical difficulty, as defined in chapter 66, and when all of the following conditions are found to exist:
 - (1) The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;
 - (2) The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
 - (3) The practical difficulty is not the result of an action or actions taken by the applicant;
 - (4) No other feasible alternative is available to the applicant, except a variance;
 - (5) The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
 - (6) The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, as amended, nor within a shoreland zone or flood hazard area, as defined in the City code of ordinances.
- (d) Process for review of variance requests. The process to review a request for a variance shall generally follow the process described in section 102-134, subsections (a), (b), (c), (d), (e), (h), (i), (j), (k), (l), and (m).
- (e) Recording. If the Zoning Board of Appeals grants a variance under subsection (a), (b) or (c) of this section, a certificate indicating the name of the current property owner, identification of the property by reference to the last recorded deed in its chain of title, the City property tax map and lot number, the fact that the variance, including any conditions on the variance, has been granted, and the date of the granting shall be prepared in recordable form. This certificate must be recorded in the county registry of deeds within 30 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 in this subsection. The date of the final written approval shall be the date stated on the written approval, as required by 30-A M.R.S.A. § 4353(5).

Sec. 102-134 Administrative appeals.

- (a) Filing. An administrative appeal shall be taken within 30 calendar days from the vote taken by the board from which a party is aggrieved or the written decision of the code enforcement officer. In the case of an administrative appeal of a Planning Board decision regarding a subdivision, the appeal shall be taken within 30 calendar days of the date of the written decision from the Planning Board. All appeals shall be considered filed at the time of delivery to the City department of planning and community development and copies shall be sent to the code enforcement officer and the Planning Board. Forms for appeal shall be those approved by the Zoning Board of Appeals, and the aggrieved person shall set forth on said forms the grounds for the appeal.

- (b) Public hearing required; notice. Before taking action on any appeal, the Zoning Board of Appeals shall hold a public hearing. The Zoning Board of Appeals shall give 10 calendar days' written notice of any hearing to the appellant, the code enforcement officer, chair of the Planning Board, and the City Council. The City department of planning and community development, on behalf of the appellant, shall provide written notification by mail to each abutter, mailed at least 10 days prior to the hearing, and the department shall retain proof of such notification. All interested persons shall be given reasonable opportunity to have their views expressed at any hearing. Only parties with standing shall be allowed to participate. Standing shall be decided by a vote of a majority of a quorum of the Zoning Board of Appeals members as a preliminary matter to the extent that any party's standing is challenged. Public notice of each Zoning Board of Appeals public hearing must be given at least seven days prior to the hearing date by advertising in a newspaper of general circulation in the City.
- (c) Failure to receive notice. Failure of any abutting property owner to receive a notice of public hearing shall not necessitate any other hearing or invalidate any action by the Zoning Board of Appeals unless said owner can demonstrate substantial actual damages as a result of the failure to receive notice.
- (d) Right of parties to appear by agent or attorney. At any hearing, a party may appear by agent or attorney. A properly scheduled and noticed hearing shall not be continued to another time except for good cause in the sole discretion of the chair of the Zoning Board of Appeals.
- (e) Attendance at hearing by City officials. The code enforcement officer or his designated assistant shall attend all hearings on appeals from decisions made by him. The code enforcement officer, his designated assistant, or the director of the City department of planning and community development, as well as the chair or his appointed representative of the Planning Board shall attend all hearings on appeals from Planning Board decisions. At the discretion of the chair of the Zoning Board of Appeals, the code enforcement officer, his designated assistant, the director of the department of planning and community development or Planning Board chair or the chair's appointed representative may, to the extent necessary for a full understanding of the appeal, be requested to present an outline of procedure, plans, photographs, or other material which constitutes the record below.
- (f) Standard of review on appeal. In all administrative appeals, except appeals from actions of the code enforcement officer, the Zoning Board of Appeals shall act as an appellate board which shall entertain all evidence of record submitted in the underlying hearing, including any transcripts, findings of facts, and decisions made by the board of original fact-finding jurisdiction. The Zoning Board of Appeals shall review the entire record and determine if the evidence of record compels the Zoning Board of Appeals to find that all or part of the decision on appeal was arbitrary or capricious and compels a contrary decision based on substantial evidence in the record. In such administrative appeals, the Zoning Board of Appeals is hereby authorized to take the following action:
 - 1. Approve the decision below.
 - 2. Reverse in part or in total the decision from below.
 - 3. Remand to the fact finding board of original jurisdiction for further proceedings necessary to either:
 - a. Complete the record in the event that the board finds it unable to render a decision due to the absence of critically important factual information; or
 - b. Remand for further proceedings consistent with the order of the Zoning Board of Appeals.
- (g) De novo review. Notwithstanding any other provision contained herein or in any other ordinance of the City of Belfast, the Zoning Board of Appeals shall not have jurisdiction to conduct de novo hearings, except in case of appeals from actions, failure to act or decisions of the code enforcement officer. In

such de novo appeals the appellant shall have the burden to prove by a preponderance of the evidence that the code enforcement officer's decision was erroneous.

- (h) Conduct of hearing. The appellant's case shall be heard first, at which time argument may be made or the appellant may simply submit written materials supporting the basis of the appeal. In de novo hearings, the appellant shall be heard first to present evidence, witnesses, followed by appellee's presentation of evidence and witnesses. Parties shall be provided an opportunity to cross-examine witnesses directly. However, the chairman of the Zoning Board of Appeals may require all questioning of witnesses be asked through him/her. All parties and members of the Zoning Board of Appeals shall abide by procedural rules as applied and interpreted by the chairman of the Zoning Board of Appeals.
- (i) Expiration of approval. Approval of a permit as a result of an appeal under the provisions of this section shall expire if the work or change involved is either not commenced within one year of the date on which the appeal is granted or, if commenced within one year of the date on which the appeal is granted, is not substantially completed within two years of the date on which such appeal is granted, unless otherwise provided for in the appeal, whichever is the more restrictive.
- (j) Filing of a second appeal on same property. If the Zoning Board of Appeals denies an appeal, no other appeal of a similar nature with regard to the same site and the same use shall be brought before the Zoning Board of Appeals unless, in the opinion of a majority of its members, substantial new evidence shall be brought forward, or unless the Zoning Board of Appeals finds, in its sole and exclusive judgment, that its denial was based on an error or mistake of law or misunderstanding of relevant and material facts.
- (k) Required vote. Three members of the Zoning Board of Appeals will constitute a quorum. Three affirmative or three negative votes shall be required to take binding legal action.
- (l) Time limit for decision; notice of decision. The Zoning Board of Appeals shall decide on any appeal within 30 calendar days of the hearing and mail or hand deliver written notice of its decision to all parties and the code enforcement officer and Planning Board within seven calendar days after the decision is rendered.
- (m) Appeal to superior court. A decision of the Zoning Board of Appeals may be appealed to the superior court in accordance with the Rule 80B of the Maine Rules of Civil Procedure, within 45 calendar days after the actual vote of decision.

Sec. 102-135 Fees.

Fees for any administrative appeal or variance shall be set by the City Council.