Selectmen's Office
Town of Waterboro

TOWN OF WATERBORO
BOARD OF SELECTMEN
NOTICE OF PUBLIC HEARING

The Town of Waterboro Board of Selectmen will hold a public hearing at the Town Hall on Tuesday, January 26, 2016 beginning at 6:00 pm. The purpose of the hearing is to receive comment regarding a proposed amendment to the Zoning Ordinance, Article 2, Section 2.08 – Size Reductions or Increases. Copies of the proposed amendments are available at the Town Hall and on the town website, www.waterboro-me.gov.

24 Townhouse Rd. East Waterboro, Maine 04030 • Tel. 247-6166 • Fax 247-3013
www.waterboro-me.gov
email: waterboro@waterboro-me.gov

Town of Waterboro

24 Townhouse Road
East Waterboro, Maine 04030

MEMORANDUM

November 6, 2015

From: Town of Waterboro Planning Board
To: Town of Waterboro Board of Selectmen

Subject: Article 2 Section 2.08 Size Reductions or Increases

The following was made at the Planning board meeting of November 4, 2015:

Kurt Clason made the motion that the Planning Board recommends elimination of Section 2.08 in the Zoning Ordinance and any reference to Section 2.08. Judy Wirth seconded. No discussion. Vote 5 yeas – 1 nay (Carll).

When 2.08 is eliminated a Building Permit Applicant will provide the necessary documents for the Code Enforcement Officer to make a determination of the completeness of the application. Should the proposed project not meet the zoning setbacks the application would be denied. The applicant would then be able to 1. change the proposed plans to comply or 2. apply to the Zoning Board of Appeals. The Zoning Board of Appeals, by State law, is the place for the community member to request an administrative appeal or a variance.

Natalie has up-dated the Zoning Board of Appeals application to include the most recent changes. The current application is attached.

TOWN OF WATERBORO, MAINE
ZONING BOARD OF APPEALS APPLICATION

Dear Applicant for an Appeal:

In order for the Zoning Board of Appeals ("Board") to consider an appeal, the law requires that you present the Board with a complete application. This purpose of this letter is to provide you with instructions on how to meet your responsibilities so that the Board may hear your case and judge it fairly.

The first thing we recommend is that you review the Zoning Ordinance to understand what relief you are seeking and the standards that apply. Then you will be prepared to complete the application form(s) attached hereto. If you do not know what zoning district the property that is the subject of the appeal is in or specific zoning restrictions on the property, you may obtain this information from the Code Enforcement Officer.

Next, you must provide the Board with the factual information required on the form given to you. If you are seeking a variance or are appealing the denial of a permit, you must provide the Board of Appeals with proof that you have a legal interest in the property about which you are bringing an appeal, in addition to information about the property, including any details about its physical characteristics. The Board may decide to make a site inspection of the property prior to conducting a public hearing on your appeal. (You are certainly entitled to accompany Board members when they make that site visit. Site inspections are public proceedings under Maine's Freedom of Access Act and are open to members of the public.

Under the zoning ordinance, the Board is authorized only to hear two types of cases: administrative appeals and variance appeals. An administrative appeal is an appeal from a decision of either the CEO or the Planning Board that you think is a wrong decision. You may think it is wrong because you do not agree with how the ordinance is being interpreted, or you may think the Town made some administrative error when processing a permit application. On the appeal application, you must explain what the decision said, what you want to do with your property (if you were denied a permit), what the permit authorized (if you are appealing the grant of a permit), why you think the decision was wrong, and what you would like the Board to do about it.

A variance appeal is a brought in the event that the CEO says you cannot meet one or more of the dimensional standards of the ordinance, such as setbacks, lot coverage, or frontage. On the application you must illustrate precisely what dimensional standard(s) you do not meet and by how much your proposed project fails to meet them.

A. Hardship Variance. State law requires the Board to find that you will experience an "undue hardship" if the variance appeal is not granted. "Undue hardship" is defined by State law. It consists of four tests. You must show that you will meet ALL four tests before the Board can grant you a variance, and you bear the burden of proving to the Board that you actually do meet ALL four tests. If you cannot make this showing, the Board does not have the legal authority to grant you a variance. Those tests are:

#1. That the land in question cannot yield a reasonable return unless the variance is granted. It should be noted that Maine courts have found that "reasonable return" does NOT mean maximum financial return for you or as high a return as your personal financial circumstances would require in order to profit from developing the property. If the Board does grant a variance, it may legally limit the size of the variance to one which yields no more than a reasonable return. The courts have also ruled that family circumstances are not a relevant consideration. A variance is for the property, not for you or your family.

#2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. This requires proof from you that your property, NOT your personal circumstances, is somehow different from other property in the neighborhood. Differences could include its shape, its topography, or its unique location.

#3. The granting of a variance will not alter the essential character of the locality. To meet this requirement, you must prove to the Board that what you propose to do will not change the neighborhood or pose health or safety problems.

#4. The hardship is not the result of action taken by the applicant or a prior owner. Past history of the property is relevant under this criterion. An example might be one where the property owner split the lot in question out of a larger parcel and in doing so created a substandard lot after zoning was enacted. You will need to present to the Board the history of how the property was created and developed over the years.

B. Practical Difficulty Variance. If your property is not located in whole or in part within the Shoreland Zone, you may apply for a variance from dimensional requirements using a second set of criteria. You must meet all six tests for the Board to grant a variance.

#1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; and

#2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; and

#3. The practical difficulty is not the result of action taken by the applicant or a prior owner; and

#4. No other feasible alternative to a variance is available to the applicant; and

#5. The granting of a variance will not unreasonably adversely affect the natural environment; and

#6. The property is not located in whole or in part within the shoreland area as described in Title 38 M.R.S.A. § 435.

As used in this section, "dimensional standards" means and is limited to ordinance provisions related to lot area, lot coverage, frontage and setback requirements, and "practical difficulty" means that the strict application of the Zoning Ordinance to the property precludes your ability to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to you.

C. Additional Variance Standards. Under the Zoning Ordinance, in order for the Board to grant a variance (either undue hardship or practical difficulty), an applicant must meet the following additional standards.

*#1. **Before a variance may be issued, the Board must determine, in addition to its finding of undue hardship or practical difficulty, that the granting of a variance would not negatively impact the best interests of the community.***

*#2. **Undue hardship shall not be construed to include: self-imposed hardships; an inability to realize as great an economic gain as would be possible if the variance were granted; or a hardship that is not unique to the applicant's land.***

*#3. **A variance, if granted, should necessitate only a slight departure from the stated requirements of an ordinance, usually not exceeding a fifteen (15) percent increase or decrease from the stated requirements.***

*#4. **A variance, if granted, must not subvert the intent of the Town's Comprehensive Plan, this ordinance or local subdivision regulations as manifested in the language of the Plan or the particular provisions from which the variance is sought.***

*#5. **A variance, if granted, must not have a harmful effect on the use of nearby land and structures insofar as that land is being used in conformity with state and local land use ordinances and regulations. The Board in granting a variance may attach appropriate conditions which will avoid harm to adjacent property owners and the public.***

Although it is unusual to apply for both an administrative appeal and a variance appeal, you are entitled to do so.

Whether you make one or two appeals, BE SURE TO COMPLETE the appropriate application form(s) and provide the Board with as much concrete documentation of your case as you can, keeping in mind the Board will weigh the nature of the evidence submitted and rely on only the evidence it judges substantial, relevant and credible. In addition to any written material submitted with the application(s), you may also bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any sworn written statements (affidavits) from individuals with personal knowledge of the property, and any documentation of previous building permits or ordinances.

Your appeal must be submitted to the Board within 30 days of the issuance of the decision of the CEO or Planning Board in order for the appeal to be heard by the Board. The Board

cannot hear your appeal until you have provided it with all information requested on the form. You are also required to submit a fee of $330.00 in order for the application to be complete.

In the event you are granted a variance, State law requires you to record the certificate of variance in the York County Registry of Deeds within 90 days of the decision in order for the variance to be valid. Therefore, be sure to obtain a signed form from the Board. Additionally, a variance expires six (6) months from the date it is granted by the Board, unless substantial work (actual construction) in reliance upon it has commenced. Work pursuant to the variance must be completed within two (2) years of the date it is granted, except that the Board may grant an extension if work on the project has been continuous and the nature of the project requires additional time.

You should also be advised that, in accordance with State law, the Board has 45 days in which to reconsider its decision, and interested persons have 45 days from the date of the Board's vote to appeal the Board's decision to court.

TOWN OF WATERBORO, MAINE
ZONING BOARD OF APPEALS

APPLICATION FOR ADMINISTRATIVE APPEAL

Name of Appellant _____

Mailing Address _____

City or Town _____ State _____ Zip Code _____

Telephone _____

Name of Owner _____

Property Located on Tax Map _____ Lot _____ Zone _____

Applicable Sections of Zoning Ordinance:

_____

_____

_____

Name of Agent (if applicable) _____

The undersigned requests that the Zoning Board of Appeals grant relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit or use approval. The undersigned believes that (check one):

____an error was made in the denial or granting of the permit or use.
____the denial or granting of the permit was based on misinterpretation of the ordinance.
____there has been a failure to approve or deny the permit within a reasonable period of time.
____other (please specify):_____

Please include the following information:

1. Attach a statement explaining in detail the facts concerning this appeal. Please be as specific as possible so that the Zoning Board of Appeals can give full consideration to the case.

2. Attach a copy of the deed, purchase and sale agreement, contract, or other documentation that gives you adequate right, title or interest in the subject property to bring this appeal.

3. Attach a copy of a sketch plan of the property showing lot dimensions and shape, existing structures, setbacks, and natural features on the lot, and indicate the locations or proposed locations of structures.

4. Attach a copy of other relevant papers concerning the appeal (applications, CEO and/or Planning Board decisions, etc.

5. Attach photos of the area (optional).

I certify that the information contained in this application and any supplement(s) hereto are true and correct, and that any attachment(s) hereto are true copies of the same.

Date _____ Appellant_____

Notice to appellant: Please file this form with the Code Enforcement Office, together with a fee of $330.00. You will be notified of the date of the hearing on your appeal.

TOWN OF WATERBORO, MAINE
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE APPEAL

Name of Appellant _____

Mailing Address _____

City or Town _____ State _____ Zip Code _____

Telephone _____

Name of Owner _____

Property Located on Tax Map _____ Lot _____ Zone _____

Applicable Sections of Zoning Ordinance:

_____

_____

_____

Name of Agent (if applicable) _____

The undersigned requests that the Zoning Board of Appeals grant a variance from the above-referenced requirements of the Zoning Ordinance.

Please include the following information:

1. Attach a statement explaining in detail the facts concerning this appeal. Please be as specific as possible so that the Zoning Board of Appeals can give full consideration to the case.

2. Attach a copy of the deed, purchase and sale agreement, contract, or other documentation that gives you adequate right, title or interest in the subject property to bring this appeal.

3. Attach a copy of a sketch plan of the property showing lot dimensions and shape, existing structures, setbacks, and natural features on the lot, and indicate the locations or proposed locations of structures.

4. Attach a copy of other relevant papers concerning the appeal (applications, CEO and/or Planning Board decisions, etc.

5. Attach photos of the area (optional).

A. Hardship Variance: In order for a variance to be granted, the appellant must demonstrate to the Zoning Board of Appeals that the strict application of the terms of the Zoning Ordinance would cause an undue hardship. There are four criteria that must be met before the Board can find that an undue hardship exists. In the attached statement, please explain how your situation meets each of these criteria listed below:

#1. The land in question cannot yield a reasonable return unless the variance is granted; and

#2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and

#3. The granting of a variance will not alter the essential character of the locality; and

#4. The hardship is not the result of action taken by the applicant or a prior owner.

B. Practical Difficulty Variance. If none of the property is located within the Shoreland Zone, the Board will review the appeal under a different set of criteria, as follows. The applicant must prove to the Zoning Board of Appeals that the variance request meets all six criteria below.

#1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; and

#2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; and

#3. The practical difficulty is not the result of action taken by the applicant or a prior owner; and

#4. No other feasible alternative to a variance is available to the applicant; and

#5. The granting of a variance will not unreasonably adversely affect the natural environment; and

#6. The property is not located in whole or in part within the shoreland area as described in Title 38 M.R.S.A. § 435.

C. Additional Variance Standards. For any variance requested under Part A or B above, Section 10.04.03 of the Zoning Ordinance sets forth five additional variance standards that applicant must demonstrate in order for the Board to grant a variance:

#1. ***The granting of a variance will not negatively impact the best interests of the community.***

#2. ***Undue hardship shall not be construed to include: self-imposed hardships; an inability to realize as great an economic gain as would be possible if the variance were granted; or a hardship that is not unique to the applicant's land.***

#3. ***A variance, if granted, should necessitate only a slight departure from the stated requirements of an ordinance, usually not exceeding a fifteen (15) percent increase or decrease from the stated requirements.***

#4. ***The granting of a variance will not subvert the intent of the Town's Comprehensive Plan, the Zoning Ordinance, or local subdivision regulations as manifested in the language of the Plan or the particular provisions from which the variance is sought.***

#5. ***The granting of a variance will not have a harmful effect on the use of nearby land and structures insofar as that land is being used in conformity with state and local land use ordinances and regulations. (The Board in granting a variance may attach appropriate conditions that will avoid harm to adjacent property owners and the public.)***

I certify that the information contained in this application and any supplement(s) hereto are true and correct, and that any attachment(s) hereto are true copies of the same.

Date _____ Appellant _____

Note to appellant: Please file this form with the Code Enforcement Office, together with a fee of $330.00. You will be notified of the date of the hearing on your appeal.