

# **OGUNQUIT ZONING BOARD OF APPEALS (ZBA) BY-LAWS**

## **I. GENERAL PROVISIONS**

The business of the Zoning Board of Appeals (hereafter referred to as ZBA) shall be conducted in accordance with Maine Statutes, Town Ordinances and Roberts' Rules of Order.

## **II. MEMBERSHIP**

- a) The ZBA shall be appointed by the Municipal Officers as specified in the Zoning Ordinance of the Town of Ogunquit and the Town Charter.
- b) Any Member of the ZBA may be removed, for cause, by the Municipal Officers before expiration of his/her term, but only after an advertised public hearing at which time the Member in question will have the 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 a Member has a "conflict of interest". At the request of the Member in question, the ZBA shall discuss the matter in executive session.
- c) When there is a permanent vacancy of either a full or Alternate Member, the Chairperson shall immediately notify the Board of Selectmen. The Municipal Officers shall appoint a person to serve for the unexpired term as specified in Article 5.1.A of the Ogunquit Zoning Ordinance.

## **III. OFFICERS & DUTIES**

- a) The officers of the ZBA shall consist of a Chairperson, Vice Chairperson, and Secretary who shall be elected annually by a majority of the Board. The officers shall be full Members of the ZBA. The election of officers shall take place at the first Meeting following the appointments to the ZBA by the Municipal Officials.
- b) CHAIRPERSON - The Chairperson shall perform all duties required by law and these By-Laws and preside at all Meetings of the ZBA. The Chairperson shall rule on issues and 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 ZBA. The Chairperson shall appoint any committees found necessary to carry out the business of the ZBA. The Chairperson's signature shall be the official signature of the ZBA and shall appear on all decisions as directed by the ZBA. The Chairperson shall designate which alternate Member shall serve in place of any absent full Member. The Chairman

reports to the ZBA on all official transactions that have not otherwise come to the attention of the ZBA. The Chairman also prepares or delegates the preparation of any reports concerning the affairs of the ZBA required or requested by the Municipal Officers.

- 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 shall see that the recording secretary keeps a record of all resolutions, transactions, correspondence, findings, and determinations of the ZBA and maintain a file in the ZBA's Meeting place. The recording secretary shall prepare a complete record of each hearing, including: dates, times and places of the hearings; subject of the hearing; identification of each participant; any agreements made between parties and the ZBA regarding procedures and testimony presented; findings of fact and conclusions; the decision of the ZBA and the date of issuance of the decision. Original documents in digital or paper form shall be filed with the Code Enforcement Office and copies are to be sent to all Members. All records are public and may be inspected at reasonable times. The Secretary, subject to the direction of the ZBA and the Chairperson, shall see that the recording secretary keeps Minutes of all ZBA proceedings, showing the vote of each Member upon every question or, if absent or failing to vote, indicating such fact. The Secretary shall also see that the recording secretary arranges proper and legal notice of hearings, attends to correspondence of the ZBA and other duties as designated by the Chairperson. The Minutes of Meetings shall be sent to all Members and Alternate Members. All hearings are to be recorded and these recordings are to be kept for a period of no less than five (5) years.
- e) ALL MEMBERS - All Members of the ZBA shall be responsible for:
  - 1. Being knowledgeable of the laws that pertain to judgments they make;
  - 2. Having thorough knowledge of the local Zoning Ordinance;
  - 3. Being familiar with related local Ordinances such as regulations concerning Subdivision and the Municipal Codes. Members shall also be familiar with the Comprehensive Plan and State Statutes relating to their activities; and
  - 4. Regular attendance at Meetings and Hearings.
  - 5. Attend Maine Municipal Association educational forums and similar seminars concerning roles and responsibilities of Zoning Boards. Board members are required to attend such training within the first year of appointment to the maximum extent possible. Annual attendance at MMA

seminars is strongly encouraged, in order to stay abreast of court decisions and statute revisions as well as the more general arena of jurisprudence and best practices regarding Board management.

#### IV. CONFLICT OF INTEREST & BIAS

- a) Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a Member from voting hereon, shall be decided by a majority vote of the Members, except the Member whose potential conflict is under consideration.
- b) The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any Member of the person's immediate family (grandparents, parents, spouse, children, grandchildren, and others living in the Member's household indefinitely) or to his/her employer or any member of the employer's immediate family. It shall also include a situation where the ZBA Member, by reason of his/her interest, is placed in a situation of temptation to serve his/her own personal interest instead of the public's interest or whenever there is a perception or appearance of conflict that would be apparent to a prudent person.
- c) If any application is submitted by a person to whom the ZBA Member is related by blood or marriage, that ZBA Member must disqualify himself/herself on grounds of bias.
- d) A Member may disqualify him/herself from voting whenever any appellant, or his/her agent, has sought to influence the vote of the Member on his/her appeal or application, other than in the public hearing.

#### V. POWERS & LIMITATIONS

The ZBA shall have the powers as specified in the Town of Ogunquit Zoning Ordinance, Article 5.2.

#### VI. MEETINGS

- a) The Meetings of the ZBA shall be held on the second Thursday of each month as needed.
- b) The Chairperson shall call a Special Meeting within ten (10) days of receipt of a written request from the majority of the ZBA or from the Municipal Officers, which request shall specify the matters to be considered at such special Meeting. At least seventy-two (72) hours written notice of time, place and business of the Meeting shall be given each Member of the ZBA, the Municipal Officers, the

Planning Board, the Code Enforcement Officer, and the appellant, if any is involved.

- c) The order of business at regular Meetings of the ZBA shall be as follows:
  - 1) Roll call and appointment of Alternate Member, if necessary;
  - 2) Confirmation of a Quorum;
  - 3) Approval of the Minutes of preceding Meeting(s);
  - 4) Unfinished Business;
  - 5) New Business;
  - 6) Code Enforcement Officer Business;
  - 7) Other Business; and
  - 8) Adjournment.
- d) All Meetings of the ZBA shall be open to the public, except executive sessions. No votes may be taken by the ZBA except in public Meeting. The ZBA shall not hold executive sessions except for consultation between the ZBA and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or the ZBA at a substantial disadvantage.
- e) Any regular or special Meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special Meeting, and such recess or adjournment to a time and place certain shall not require additional public notice. If no business is scheduled before the ZBA or it is apparent that a quorum will not be available, any Meeting may be canceled by the Chairman by giving notice to all Members and appellants on the agenda at least twenty-four (24) hours before the time for such Meeting.
- f) Materials submitted after filing the application with the Land Use Department may only be made up to fourteen (14) days prior to the hearing so the ZBA Members may have adequate time to review.

## VII. QUORUM

- a) A quorum shall consist of three (3) Members of the ZBA. If a Member has a conflict of interest, said Member shall not be counted by the ZBA in establishing the quorum for such matter.

- b) No hearing or Meeting of the ZBA 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 or a subsequent date.
- c) All matters shall be decided by a roll call vote. Decisions on variances and appeals before the ZBA shall require the affirmative vote of three (3) Members. Decisions on interpretative matters before the ZBA shall be by simple majority.
- d) If the ZBA has Alternate Members, the Chairperson shall appoint an Alternate Member to act for a regular Member who is disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The Alternate Member will act for the regular Member until the case is decided.
- e) If the ZBA has no Alternate Members, no regular Member shall vote on the determination of any matter requiring a public hearing unless he/she has attended the public hearing thereon or has familiarized him/herself with such matter by reading the record.

#### VIII. APPEALS FEE

The fee to accompany applications shall be set by the Board of Selectmen. Checks are to be made payable to the Town of Ogunquit.

#### IX. HEARINGS

- a) The ZBA shall schedule a public hearing on all appeals within (30) days of the receipt of a completed application.
- b) The ZBA shall cause notice of the date, time, and place of such hearing, the location of the building or lot and the 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 ten (10) days prior to the hearing. The owners of property abutting the property for which the appeal is taken shall be notified by certified mail at least ten (10) days prior to the date of the hearing.
- c) The ZBA shall provide, as a matter of policy, for the 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 and determines whether there is a quorum;

- 2) The Chairperson then describes the purpose of the hearing, the nature of the case, and the general procedures to be followed;
- 3) The ZBA decides whether the applicant has the right to appear before the Board;
- 4) The ZBA determines whether it has jurisdiction over the appeal;
- 5) The ZBA determines which individuals attending the hearing are "interested" parties.
  - i) "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 ZBA's decision. Parties may be required by the ZBA 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 and the Code Enforcement Officer shall automatically be made parties to the proceeding.
  - ii) Witnesses will be required to state for the record their name, residence, business or professional affiliation, the nature of their interest in the hearing and whether or not they represent another individual, firm, association, organization, partnership, trust, company, corporation, State agency or other legal entity for the purpose of the hearing.
6. The Chairperson or the Chairperson's designee will give a statement of the case and will incorporate into the record, correspondence and reports filed with the ZBA prior to the hearing. This material shall be available for public inspection.
7. The appellant is given the opportunity to present his/her case without interruption.
8. The ZBA 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 ZBA may call its own witnesses, such as the Code Enforcement Officer.

10. The appellant may ask questions of the interested parties and ZBA witnesses through the Chair.
  11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
  12. The ZBA shall receive comments and questions from all observers and interested citizens who wish to express their views.
  13. The hearing will be closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants shall be notified of the date, time and place of the continued hearing and the reasons for the continuance.
  14. Written testimony may be accepted by the ZBA for seven (7) days after the close of the hearing if a decision has not been reached. All written testimony shall be available for public inspection at the municipal offices during normal business hours.
  15. ZBA legal counsel, and other consultants to the ZBA, who the ZBA has empowered to report to the ZBA have the right to submit proposed findings and conclusions at any public Meeting prior to the decision being finalized.
- e) The ZBA may waive any of the above rules upon good cause shown.

## X. DECISIONS

- a) The final decision on any matter before the ZBA shall be made by written order signed by the Chair or the Chair's designee. 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 of fact and conclusions, as well as the reasons or basis therefore, upon all material issues of fact, law, or discretion presented and the appropriate order, relief, or denial thereof.
- b) The ZBA, 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 the Findings of Fact by the ZBA in each case.
- c) In reviewing an application on any matter, the standards in any applicable local ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

d) Notice of any decision shall be sent by mail or hand delivered to the applicant, his/her representative or agent, the Planning Board, the Code Enforcement Officer, and the Municipal Officers within seven (7) days of the decision.

e) The decision of the ZBA shall be filed in the Planning and Code Enforcement Office and shall be made public record. The date of filing of each decision shall be entered into the official records and minutes of the ZBA.

#### XI. RECONSIDERATION

Any party aggrieved by a decision or order of the Board or a Board Member may petition the Board to reconsider a decision.

The Board may reconsider a decision only if:

- 1) The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based;
- 2) The Board misinterpreted the Ordinance, followed improper procedures or acted beyond its jurisdiction; or
- 3) If a second application for a variance on property where a variance was previously denied is substantially different from the previous one.

#### XII. APPEALS TO SUPERIOR COURT

The decision of the ZBA may be taken by any party, within thirty (30) days after the decision is rendered, to Superior Court in accordance with the Maine Rules of Civil Procedure.

#### XIII. AMENDMENTS

- a) These By-Laws may be amended by a majority vote of the Board.
- b) The invalidity of any section or provision of these By-Laws shall not be held to invalidate any other section or provision of these By-Laws.

ADOPTED BY VOTE OF THE OGUNQUIT ZONING BOARD OF APPEALS (ZBA) ON:  
9/21/2000; 5/17/2001; 7/18/2002; 5/29/2003; 5/13/2004; 2/1/2018; 5/2/2019.