

10. Land Use Ordinance Article 6(Board of Appeals)

- A. Section C (Appeals Procedure) Revise Appeals Board meeting scheduling procedures to allow the Board to routinely schedule as annually established.**

Changes are shown via strikeout and colored text additions

ARTICLE #: Shall Article 6 (Board of Appeals) of the Raymond Land Use Ordinance, Section C, (Appeals Procedures), as adopted May 21, 1994, and amended through June 4, 2019, be further amended by the adding the underscored language and removing the language in strikeout text as shown below?

DESCRIPTION:

One Changes:

- *Strike out current wording describing scheduling of meeting "on the last Monday of the month" and replace the allowing Board of Appeals as to routinely schedule and as annually established.*

[Note: The use of the word "Article" within the ordinance does not indicate a separate warrant article.]

Town of Raymond Land Use Ordinance
As adopted May 21, 1994 amended through June 6, 2017
ARTICLE 6 – BOARD OF APPEALS

ARTICLE 6 - BOARD OF APPEALS

A. Appointment and Composition

The Board of Appeals shall consist of five (5) members and one (1) alternate member, all of whom shall be residents of the Town of Raymond. The present members of the Board of Appeals shall continue to hold their office until their present term of office expires. Thereafter, the Board of Selectmen shall appoint members for a three (3) year term and in the event of a vacancy, shall fill the term for the unexpired portion thereof. The alternate member shall be appointed for a term of three (3) years and shall act on said Board in place of any member who may be unable to act due to interest, absence or physical incapacity. The Board shall annually elect from their membership a Chairman to preside at all meetings of the Board. A secretary shall provide for the keeping of the minutes of the proceedings of the Board of Appeals. All minutes of the Board shall be public record. In addition, the following statutes shall apply:

1. A municipal officer or their spouse shall not be a member of the Board;
2. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereof shall be decided by a majority vote of the members except the member who is being challenged;
3. A member of the Board may be dismissed for cause by the municipal officers before the expiration of his term.

B. Powers and Duties

1. The Board of Appeals shall have the following authority:
 - a. Subject to the provisions of this Ordinance, to hear and decide appeals, on a de novo basis, from orders, decisions, determinations or interpretations made by the Code Enforcement Officer or the Building Inspector. *[Amended 8/7/07, and 6/7/16]*
 - b. Subject to the provisions of this Ordinance, to hear and grant or deny applications for variances from the terms of the Land Use Ordinance. A variance may be granted for lot areas, lot coverage by structure, and setbacks. A variance shall not be granted to permit a use or structure otherwise prohibited, except for non-conforming uses, structures and lots as described in Subsection d. below. A variance can only be granted where undue hardship is proven. Undue hardship is defined to mean:
 - 1) That the land in question cannot yield a reasonable return unless the variance is granted;

Town of Raymond Land Use Ordinance
As adopted May 21, 1994 amended through June 6, 2017
ARTICLE 6 – BOARD OF APPEALS

- 2) That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood;
 - 3) That the granting of a variance will not change the essential character of the locality;
 - 4) That the hardship is not the result of action taken by the applicant or a prior owner;
 - 5) Permitted variances run with the land and thus pass from one owner of a property to the next.
- c. To grant a set-back variance for a single family dwelling only when strict application of the Land Use Ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means *[Amended 6/7/16]*:

- 1) The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- 2) The granting of the variance will not alter the essential character of the locality;
- 3) The hardship is not the result of action taken by the applicant or a prior owner;
- 4) The granting of the variance will not substantially reduce or impair the use of abutting property;
- 5) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance under this subsection may be permitted only from the setback requirements for a single family dwelling that is the primary year round residence of the applicant. A variance under this subsection may not exceed 20% of a setback requirement and may not be granted if the variance would cause the combined area of the dwelling and any other structures to exceed the maximum permissible lot coverage. *[Adopted 5/15/93]*

- d. To hear and grant or deny applications for conditional use permits as specified within this Ordinance. In granting permits under this section, the Board of Appeals may impose such conditions, as it deems necessary in furtherance of the intent and purpose of this Ordinance. Conditional use permits run with the land and thus pass from one owner of a property to the next;
- e. To vary the provisions of non-conforming lots, non-conforming structures and non-conforming uses of structures and non-conforming uses of land, but only in accordance with the provisions specified in Article 3 of this Ordinance.
- f. The board of Appeals shall not have the authority to review decisions of the Planning Board. Decisions by the Planning Board shall be appealed directly to Superior Court. *[Amended 6/7/16]*

Town of Raymond Land Use Ordinance
As adopted May 21, 1994 amended through June 6, 2017
ARTICLE 6 – BOARD OF APPEALS

2. In hearing appeals under this section, the Board of Appeals shall require that attention be given to the following, wherever applicable:
 - a. Location, character and natural features;
 - b. Fencing and screening;
 - c. Landscaping, topography and natural drainage;
 - d. Vehicular access, circulation and parking;
 - e. Pedestrian circulation;
 - f. Signs and lighting;
 - g. All factors which affect health, welfare and safety;
 - h. Such conditions as it deems necessary in furtherance of the intent and purpose of this Ordinance.

3. Appeals from decisions under the Shoreland Zoning provisions and variances from the Shoreland Zoning provisions are governed by the appeals and variance procedures contained in the Shoreland Zoning provisions and are not governed by Article 6 of the Land Use Ordinance.

C. Appeals Procedure

1. The Board of Appeals shall meet as needed ~~and as routinely scheduled following the Schedules and Deadlines on the last Monday of the month and as established by the Board of Appeals annually prior to the effective calendar year.~~ A quorum of the Board is necessary to conduct an official Board meeting shall consist of at least three (3) members. A majority vote of the quorum is required for the passage or denial of any appeal.

2. The secretary shall record a permanent record of all Board meetings. All meeting minutes, and all correspondence of the Board shall be maintained in the Town Office.

The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, 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 therefore, upon all the material issued of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of all decisions shall be mailed or hand-delivered to the applicant, or his or her representative or agent.

3. When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At that time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision. *[Amended 6/7/16]*

Town of Raymond Land Use Ordinance
As adopted May 21, 1994 amended through June 6, 2017
ARTICLE 6 – BOARD OF APPEALS

4. For all appeals, the Board shall hold a public hearing as prescribed herein. At least seven (7) days before the hearing, the Code Enforcement Officer shall notify, by mail, the owners of properties abutting the property for which the appeal or application is made. Failure to receive this notice shall not invalidate the proceedings herein prescribed. The owners of properties shall be considered to be the parties listed by the Assessor as those against whom those taxes are assessed. Notice of the hearing shall also be placed at least twice in a newspaper of general circulation at least seven (7) days prior to the hearing.

The Code Enforcement Officer shall attend all hearings and shall present to the Board all plans, photographs, or other factual materials, which are appropriate to an understanding of the case.

5. Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer or who wishes to request a variance from the Land Use Ordinance or who wishes a Conditional Use Permit may file an application with the Board of Appeals. An appeal of a decision made by the Code Enforcement Officer must be filed within thirty (30) days of the date of the decision.

Application materials submitted to the Board must include a completed application form, including a location and site plan if appropriate, and the following fees: *[Amended 06/03/2014]*

- (1) Application fees as established by the Board of Selectmen and listed in the Town Fee Schedule.
- (2) Escrow fees as established by the Board of Selectmen and listed in the Town Fee Schedule. The fees shall be submitted and deposited in an escrow account established by the Town, which monies may be used by the Town to pay for professional legal and technical reviews and advice related to the appeal, variance, or conditional use permit application as deemed necessary by the Town. Said fees for professional reviews and advice shall include, but shall not be limited to engineering or other professional consulting fees, attorney fees, recording fees and appraisal fees.

The total escrow fees required shall be an amount estimated by the consultants and the Town as sufficient to pay for the professional review of the application. If the Town expends more than fifty percent (50%) of the escrow account prior to completing its review, the applicant shall replenish the escrow account to an amount estimated by the consultants as sufficient to complete the review. Those monies deposited by the applicant and not spent by the Town in the course of its review shall be returned to the applicant

Town of Raymond Land Use Ordinance
As adopted May 21, 1994 amended through June 6, 2017
ARTICLE 6 – BOARD OF APPEALS

within sixty (60) days after the Appeals Board renders its final decision on the application.

All application materials must be submitted for the Board's review at least thirty (30) days prior to the Board meeting at which the applicant wishes to be heard. All meetings of the Board of Appeals are public hearings. At the public hearing, the applicant or the applicant's representative must appear before the board to present the proposal and to answer questions. Other interested parties, such as adjacent property owners, will also be permitted to speak for or against the appeal.

Written notice of the decision of the Board shall be sent to the appellant within sixteen (16) days of the date of the decision. Any aggrieved party may appeal from the decision of the Board to the Superior Court within forty-five (45) days of the date of the vote on the original decision. *[Amended 6/7/16]*

6. The Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision.. The Board may conduct additional hearings and receive additional evidence and testimony. *[Amended 6/7/16]*
7. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one (1) year has elapsed from the date of said decision, except that the Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done, or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal. *[Amended 6/7/16]*
8. The right of any variance from the terms of this Ordinance granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six (6) months or substantially completed within one (1) year as of the date of the vote by the Board. For the purposes of this subsection, substantial completion means the outside of the structure must be complete. *[Amended 5/18/91]*

D. Reductions from minimum setbacks

The Board of Appeals may grant reductions from the minimum setback requirements set forth in Article 4 of this Ordinance according to all of the following criteria:

1. Setback reduction appeals are only available to reduce the minimum requirements for setbacks of structures from lot boundary lines. Setback