

**Bylaws of the
Town of St. George Board of Appeals**

Section 1. Purpose and Scope

The purpose of these bylaws is to establish reasonable rules of procedure for Board of Appeals meetings and to promote the fair, orderly and efficient conduct of the Board's proceedings and affairs.

These bylaws shall govern the Board's practices and procedures except as otherwise provided by Maine law, town ordinances or the town charter, and shall be liberally construed to accomplish their purpose.

Section 2. Officers; Duties

Officers of the Board shall consist of a Chairperson, Vice Chairperson and Secretary to be chosen at the annual organizational meeting which shall be held on the first occasion on which the Board meets after July 1 of each year by and from among Board members unless otherwise provided by law.

The Chairperson shall preside at all Board meetings and shall have authority to rule on questions of evidence and procedure, to maintain order and determine the course of proceedings, and to take such other action as may be necessary and not inconsistent with these bylaws to enable the Board to perform its duties and conduct its affairs.

The Chairperson shall, in consultation with other members or town staff as needed, set the agenda for each meeting.

In the absence of the Chairperson, the Vice-Chairperson shall preside and shall have the same authority as the Chairperson.

The Secretary shall coordinate with town staff, including a recording secretary, if any, to ensure that a permanent record of all Board meetings and all correspondence of the Board is maintained as a public record except as otherwise provided by law.

Section 3. Meetings

- A. The regular meeting of the Board shall be held when an appeal or variance application has been filed, and otherwise as necessary.
- B. Special meetings or workshops may be called at the discretion of the Chairperson or upon the request of a majority of the Board. Notice thereof shall be given to each member and notice of the meeting and the agenda shall be posted on the town's website at least one week in advance of the meeting. No business may be conducted other than as specified in said notice.
- C. The order of business at regular meetings of the Board shall be as follows:
 - (1) roll call and determination of a quorum;
 - (2) ascertainment of whether any member has a conflict of interest;
 - (3) review and approval of the minutes of the preceding meeting;
 - (4) action on held cases;
 - (5) public hearing (when scheduled);
 - (6) other business;
 - (7) adjournment.
- D. All meetings of the Board shall be open to the public, except during executive sessions as permitted by the Right to Know Law. No votes may be taken by the Board except in a public meeting.
- E. Notice of all Board meetings at which appeals will be heard shall be given as required by law, and all such meetings shall be open to the public except as otherwise provided by law.
- F. No business may be conducted by the Board except at a duly called and noticed meeting or without a quorum being present.

Section 4. Quorum, Voting and Participation

- A. The number of members of the Board of Appeals constituting a quorum for the purpose of taking any action, and the vote required to decide any matter, shall be as provided in the Town Charter.
- B. Participation or disqualification where there is conflict of interest and shall be governed by the Town Charter.
- C. The participation and voting by alternate or associate members shall be governed by the Town Charter.
- D. A member may participate in voting on a matter for which she or he was not present for prior proceedings if the majority of the remaining members of the Board of Appeals are satisfied that the previously-absent member has familiarized him- or herself with the record to date.
- E. Members may attend meetings and vote on matters before the vote consistent with the Board's Policy for Remote Participation in Public Proceedings, and as provided for in state law.

Section 5. Notice and Conduct of Hearings

- A. Notice of all such hearings shall be given as set forth in Section 20 of the Town of St. George Board of Appeals Ordinance adopted May 9, 2022.
- B. Hearings shall be conducted consistent with the provisions of Section 21 of the Town of St. George Board of Appeals Ordinance.
- C. The Chairperson shall convene all hearings by describing the purpose of the hearing and the general procedures to be followed. The Board may receive any oral or documentary evidence in matters subject to *de novo* review, but shall exclude irrelevant, immaterial or unduly repetitious evidence, provided, however, that formal rules of evidence shall not apply.
- D. Every party shall have the right to present its case in the order determined by the Chairperson and without interruption, provided, however, that the Chairperson may impose such reasonable time limits as may be necessary to ensure that all parties have an adequate opportunity to be heard.

- E. Where the Board is conducting a *de novo* review, every party shall also have the right to submit rebuttal evidence, provided however, that the Chairperson may impose such reasonable limitations as may be necessary to prevent an abuse of process.

Section 6. Standards of Review and Burdens of Persuasion.

- A. When the Board of Appeals hears an administrative appeal from an action or failure to act by a covered Board or committee, its standard of review is appellate in nature. Under that standard, the Board of Appeals—
- (1) shall base its decision only on the record and facts presented to the covered Board or committee and on arguments made to the Board of Appeals by parties to the appeal based on that record and those facts;
 - (2) shall not receive or consider additional evidence or testimony not presented to the Planning Board; and
 - (3) shall reverse the decision of the covered Board or committee only if the appellant satisfies the burden of persuading the Board of Appeals that the Board's or committee's decision was contrary to specific provisions of a covered ordinance or not supported by evidence presented to the Board or committee.
- B. When the Board of Appeals hears an administrative appeal from an action or failure to act by a covered Town official, its standard of review is *de novo* in nature. Under that standard, the Board of Appeals—
- (1) shall review not only the record and facts before the covered Town official but also any additional evidence presented to the Board of Appeals by the parties to the appeal or requested by the Board of Appeals and shall base its decision on such records, facts, and evidence and on any arguments made to the Board of Appeals by parties to the appeal;
 - (2) shall approve an underlying application only if the person who filed it satisfies the burden of proving, by a preponderance of the evidence, facts establishing that all requirements of each relevant covered ordinance for the approval of the underlying application are satisfied;

- (3) shall reverse a decision by the covered Town official to take an enforcement action only if the appellant satisfies the burden of proving facts establishing that the decision was erroneous; and
 - (4) shall make its own independent decision to approve, approve with conditions, or deny the underlying application or enforcement decision based on whether, on the facts it finds and the legal conclusions it reaches, the requirements of each relevant covered ordinance have been met.
- C. When the Board of Appeals hears a variance application, its standard of review is *de novo*. Under that standard, the Board of Appeals -
 - (1) shall review evidence presented to the Board of Appeals by the parties to the application or requested by the Board of Appeals and shall base its decision on such records, facts, and evidence and on any arguments made to the Board of Appeals by parties to the application;
 - (2) shall approve the application only if the applicant satisfies the burden of proving, by a preponderance of the evidence, facts establishing that all requirements of this ordinance and all relevant land use ordinances for the approval of the application are satisfied; and
 - (3) shall make its own independent decision to approve, approve with conditions, or deny the application based on whether, on the facts it finds and the legal conclusions it reaches, the requirements of all relevant land use ordinances have been met.

Section 7. Decisions

- A. All decisions of the Board shall be made within the time limits established by law and as set forth in the St. George Board of Appeals ordinance.
- B. To allow for the drafting and review of a written decision and comply with the deadlines set forth in Maine law and the St. George Board of Appeals ordinance, the Board of Appeals will hold a discussion at the conclusion of presentation of arguments and evidence (if a *de novo* review) by the parties and cause a draft of a tentative written decision to be prepared for review at a continuation of the hearing.

- C. At such continuation(s) of the hearing, the Board of Appeals shall review the draft written decision, continue its discussion, vote, and approve a final written decision.
- D. All final decisions shall be in writing and shall become a part of the Board's permanent record. All such decisions, together with any transcript of testimony and deliberations and any documents and exhibits offered to the Board, shall constitute the record of the proceedings and shall be a public record, except as otherwise provided by law.
- E. Notice of any decision shall be given set forth in the St. George Board of Appeals ordinance Section 22, and as required by Maine law.
- F. The Board may reconsider any decision as set forth in the St. George Board of Appeals ordinance Section 23, and as required by Maine law.

Section 8. Conflict with Laws

Any conflict or inconsistency between these bylaws and any applicable law shall be resolved in favor of the law.

Section 9. Waivers; Amendments

These bylaws may be amended at any time by majority vote of the Board at an open meeting so long as notice of the proposed amendments were posted on the Town's website one week prior to a vote on the proposed amendments.

Adopted by the Board on Steve A. Miller - chair
5/12/22