

§ 185-16. Administration.

A. Administering bodies and agents.

- (1) Code Enforcement Officer(s). Code Enforcement Officer(s) shall be appointed.
- (2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. § 2691.
- (3) Planning Board. A Planning Board shall be created in accordance with the provisions of state law.

B. Permits required. After the effective date of this chapter, no person shall, without first obtaining a permit or site plan approval, as applicable, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this chapter shall have a copy of the permit on-site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is not longer than 75 feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this chapter shall be in addition to any other permit required by other law or ordinance.

C. Permit application.

(1) Requirements.

- (a) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in § 185-14. The Code Enforcement Officer or the Planning Board may require the submission of any information necessary to determine conformance with the provisions of this chapter.
- (b) The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in § 185-14. Approval shall be granted only if the proposed use is in conformance with the provisions of this chapter.
- (c) For any of the uses listed in § 185-14 that require site plan review by the Planning Board under Article 8 of Chapter 120, applications for such uses shall be classified as major developments under § 120-803(A)(1), and the applicant must meet all applicable requirements set forth in § 120-807 (Review procedures for

major developments) and § 120-812 (Performance standards and approval criteria).

- (2) Owner's signature. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) Sewage disposal. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the local Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
- (4) Contractor certification. When an excavation contractor will perform an activity that requires or results in more than one cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used, and municipal, state and federal employees engaged in projects associated with that employment.
- (5) Photographic record. All applications shall include preconstruction photographs clearly showing shoreline vegetation on the property and the site(s) of any proposed development. If the Code Enforcement Officer or the Planning Board, as appropriate, approves an application, they shall include a condition of approval requiring that, no later than 20 days after completion of the development, the applicant provide postconstruction photographs of the same shoreline vegetation and developed site(s). **[Added 3-26-2024 by Order No. 24-044]**

D. Procedure for administering permits.

- (1) Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in § 185-14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications, including all requested information. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 60 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this chapter. Notwithstanding the foregoing language, for any applications for uses that require site

plan review, the Planning Board must follow the review procedures for major developments under § 120-807.

- (2) The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this chapter and any other chapter, if applicable.
 - (3) After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it meets all applicable requirements contained in § 120-812, and makes a positive finding based on the information presented that the proposed use:
 - (a) Will maintain safe and healthful conditions;
 - (b) Will not result in water pollution, erosion, or sedimentation to surface waters;
 - (c) Will adequately provide for the disposal of all wastewater;
 - (d) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - (e) Will conserve shore cover and visual, as well as actual, points of access to inland waters;
 - (f) Will protect archaeological and historic resources as designated in the Comprehensive Plan;
 - (g) Will avoid problems associated with floodplain development and use; and
 - (h) Is in conformance with the provisions of § 185-15, Land use standards.
 - (4) If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.
 - (5) An aggrieved party may appeal from a decision of the Planning Board to the Superior Court within 30 days after the applicant is notified of the Planning Board's decision.
- E. Conditions. Permits granted under this section may be made subject to reasonable conditions to ensure conformity with the purposes and provisions of this chapter.
- F. Expiration of permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. The foregoing language does not apply to uses requiring site plan approval, which approvals shall expire in accordance with § 120-815(A).
- G. Special exceptions. In addition to the criteria specified in § 185-16D above, excepting structure setback requirements, the Planning Board may approve a permit for a single-family residential structure in a Resource Protection District, provided that the applicant demonstrates that all of the following conditions are met:
- (1) There is no location of the property, other than a location within the Resource Protection District, where the structure can be built.

- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the Registry of Deeds of the county in which the lot is located before the adoption of the Resource Protection District.
 - (3) All proposed buildings, sewage disposal systems and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be one-half the width of the 100-year floodplain.
 - (4) The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
 - (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but no less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.
- H. Installation of public utility service. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this chapter or any previous ordinance has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.
- I. Appeals.¹
- (1) Jurisdiction and authority. In addition to the power granted by 30-A M.R.S.A. § 2691, the Board of Appeals shall have the following jurisdiction and authority:
 - (a) Administrative appeals. Subject to the provisions of this chapter, to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this chapter. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this chapter is not

1. Editor's Note: Original Sec. 199-16I1, Appointment, of the 1991 Code, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

appealable to the Board of Appeals.

- (b) Variance appeals. Subject to the provisions of this chapter, to hear and grant or deny application for variances from the terms of this chapter.
 - (c) Home occupations. Subject to the provisions of this chapter, to determine if various types of commercial activities would fall within the category of a home occupation.
- (2) Variance appeals.
- (a) A variance may be granted for lot area, lot coverage by structure, setbacks and off-street parking.
 - (b) A variance shall not be granted to permit a use or structure otherwise prohibited by this chapter.
 - (c) The Board shall not grant a variance unless it finds that:
 - [1] The proposed structure or use would meet the provisions of § 185-15 except for the specific provision which has created the nonconformity and from which relief is sought; and
 - [2] The strict application of the terms of this chapter would result in undue hardship. "Undue hardship" is defined to mean:
 - [a] That the land in question cannot yield a reasonable return unless the variance is granted;
 - [b] 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;
 - [c] That the granting of a variance will not change the essential character of the locality; and
 - [d] That the hardship is not the result of action taken by the applicant or a prior owner.
 - (d) Permitted variances run with the land and thus pass from one owner to the next.
 - (e) Notwithstanding § 185-16I(2)(b) above, the Board of Appeals, or the Code Enforcement Officer if authorized in accordance with 30-A M.R.S.A. § 4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. 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 dwelling 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 in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary

for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to § 185-16I(3)(g) and J(5)(b) below.

- (f) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this chapter to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
 - (g) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.
 - (h) Expiration date. The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not begun within six months or substantially completed within one year of the date of the vote by the Board. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (3) Administrative appeals. When the Board of Appeals reviews a decision of the Code Enforcement Officer, the Board of Appeals shall hold a de novo hearing. At this 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.
- (4) 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.
- (5) In granting appeals under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter.

J. Appeal procedure.

- (1) The Board of Appeals is established pursuant to Chapter 120, Land Use, and shall

operate according to the rules and procedures set forth therein unless otherwise modified by this chapter.² [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]

- (2) Appeals. 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 this chapter or who wishes a use permit may file an application with the Board of Appeals.
 - (a) An appeal of a decision made by the Code Enforcement Officer, except for enforcement-related matters as described in § 185-16I(2)(a) above, must be filed within 30 days of the date of the official written decision.
 - (b) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal, which includes:
 - [1] A completed application form.
 - [2] A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - [3] A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
 - [4] A fee as approved by the Windham Town Council, which must be submitted to the Code Enforcement Officer at the time the appeal request is submitted.
 - (c) All application materials must be submitted for the Board's review at least 14 days prior to the Board meeting at which the applicant wishes to be heard.
 - (d) All meetings of the Board are public hearings. At the public hearing, the applicant or his 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.
 - (e) Written notice of the decision of the Board shall be sent to the appellant within seven days of the date of the decision.
 - (f) Any aggrieved party may appeal from the decision of the Board to the Superior Court within 45 days of the decision date.
 - (g) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
 - (h) The Board of Appeals shall hold a public hearing on administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.
 - (i) The person filing the appeal shall have the burden of proof.

2. Editor's Note: Original Secs. 199-16J2, Minutes, and 199-J3, Public Hearing, of the 1991 Code, which immediately followed this subsection, were repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) Decision by Board of Appeals.
 - (a) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
 - (b) The Board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
 - (c) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Code Enforcement Officer and the municipal officers.
 - (d) 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 year shall have 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.
- (4) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. § 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days of the date of any decision of the Board of Appeals.
- (5) Reconsideration.
 - (a) In accordance with 30-A M.R.S.A. § 2691, Subsection 3F, the Board of Appeals may reconsider any decision within 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 being 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. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.
 - (b) Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

K. Enforcement.

- (1) Nuisances. Any violation of this chapter shall be deemed to be a nuisance.
- (2) Code Enforcement Officer.
 - (a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of

this chapter. If the Code Enforcement Officer shall find that any provisions of this chapter is being violated, he or she shall notify, in writing, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done; removal of illegal buildings or structures; and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.

- (b) The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this chapter.
 - (c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.
- (3) Legal actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- (4) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this chapter shall be penalized in accordance with 30-A M.R.S.A. § 4452. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**