

Bar Harbor Board of Appeals

Rules of Procedure

Authority.

These Rules of Procedure are regulations adopted by the Bar Harbor Board of Appeals pursuant to 30-A MRSA § 3(C) and Bar Harbor Land Use Ordinance (“LUO”) §125-103 (D)(1)(g). The Chair may waive any regulation in the Rules of Procedure upon good cause shown to the extent allowed by law.

Receipt of Documents.

The applicant will prepare and provide to the Planning Director 10 copies of the full application in binders with tabs, together with two copies of all large-format exhibits. Staff will date stamp all pages of each exhibit of the secure file copy “Received,” so that they can later determine the last submitted version. Documents submitted by the appellee or other interested parties shall be treated similarly.

Submittal Deadlines.

By the appellant. To be placed on the agenda for the Board of Appeals, all application materials to be considered by the Board must be submitted by noon, 20 days prior to the meeting at which it is to be heard, (LUO §103 (C)(1)(a)). This deadline shall apply to all applications including:

- Requests for Variances,
- Administrative Appeals,
- Relocation of Nonconforming Structures,
- Change of Nonconforming Use,
- Relocation of a Nonconforming Use, and
- Change of Nonconforming Use in a Shoreland District.

A complete application shall include the following: 1) an official application form provided by the Planning Department, 2) any supporting materials required by the Land Use Ordinance, and 3) any other materials the appellant wishes to submit in support of the appeal. In no case shall an application be placed on the agenda without all the application materials required by the Land Use Ordinance. Space on an agenda may not be reserved by telephone call, letter, or partial submission. New applications will be placed on the agenda on a first-come first-served basis.

As an exception to the 20-day deadline, a request for Reconsideration shall be subject to the timelines and requirements of Section 125-106.

By appellee and other interested parties. Pursuant to LUO §125-103 (C)(1)(b) for **appellant review hearings** interested parties must file 12 copies of their documents with the Planning Director no later than noon seven days prior to the public hearing. Pursuant to §125-103 (C)(2)(b) for **evidentiary hearings**, the appellee and other interested parties must file 12 copies or 10 copies, respectively, of their documents with the Planning Director no later than noon seven days prior to the public hearing.

By staff. Submittals by staff pursuant to LUO § 125-103 (D)(1)(j) are not subject to deadlines and may be submitted at any time.

Late Submittals.

Late submittals shall be accepted by the Planning Department but conspicuously marked “LATE” and dated. Unless the Board or Chair orders otherwise, late submittals shall not be considered by, or distributed to, the Board.

Continuances.

Requests for continuances must be filed in writing with the Planning Department with copies to all known interested parties within two business days of the date the requester first learned of the need for a continuance. The requester must make a good faith effort to contact other interested parties to find out if an interested party objects to the request for a continuance. The requester must inform the Planning Department whether –she/he knows the position of the other interested parties regarding the request for a continuance. The Chair may grant a request for a continuance if the other interested parties have affirmatively indicated that they do not object to a continuance. The Chair may grant a continuance over an objection or lack of affirmative consent only in extraordinary circumstances. Otherwise, the Board will rule on the request for a continuance to which there is an objection or lack of affirmative consent. All interested parties must be prepared to proceed with the hearing in the event the Board denies the request for a continuance even if the Board rules on the request for a continuance on the same night scheduled for the hearing.

Meeting Procedures.

The appellant’s case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions by the parties may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair. Members of the public may offer statements relevant to the project under consideration once the public comment portion of the meeting is opened. All speakers shall have a reasonable time to speak. The duration of each speaker’s remarks shall be limited at the discretion of the Chair. All votes of the Board of Appeals must be by a majority of the five-member board, not a majority of the sitting quorum. No vote of fewer than three members voting either in the affirmative or negative is a valid vote. When a member is unable to act because of conflict of interest, physical incapacity, absence from the state, or any other reason satisfactory to the Chair, the Chair shall designate the alternate to act in his or her stead. The alternate is encouraged by the Board to attend and participate in all meetings of the Board. The alternate may vote only when he or she has been designated by the Chair to act for a member.

Appropriate Questions for Consideration.

The Board of Appeals will only consider questions based on the Bar Harbor Land-Use Ordinance and will not consider any other questions such as equitable estoppel, taking, and other issues beyond the Board’s purview. The Board of Appeals cannot hear new evidence that is not already part of the record on appeal in an appellate review hearing.

The Written Decision.

Following the final vote on an appeal, staff shall prepare and submit to the Chair an initial written decision, which the Chair may revise so it accurately describes the reasons for the Board’s decision. The revised decision shall then be circulated to the Board members who will communicate their approval to the Planning Department within 48 hours of receiving the draft

decision. Board members may deliberate on the substantive merits of the decision only at an open, public Board meeting. Board members may, however, point out typographical and grammatical errors in the decision and may indicate whether that Board member would like to schedule an open meeting to deliberate the merits of the written decision. Such request may be made in an email to the Planning Department. If a Board Member requests a meeting to discuss the substantive merits of the written decision, the Chair shall call such a meeting. The Chair may, also, on her/his own initiative schedule a special meeting to deliberate on the substantive merits of the written decision. If no meeting is called for and the Chair sees no reason to hold such a meeting, the Chair may sign the written decision on behalf of the Board. Whether or not there is a meeting to deliberate the written decision, a final version of the decision should be available to the appellant within ten working days following the Board meeting at which the decision was formed.

Requests for Reconsideration.

Applicant Request. Requests for reconsideration must be filed in writing within ten days of the Board's vote on the final decision. The written request for reconsideration must clearly explain both the grounds for reconsideration and why those grounds could not have been brought to the Board's attention during the hearing. Acceptable grounds for reconsideration are: 1) In appeals by evidentiary hearing, newly discovered evidence that could not have been discovered with due diligence before the evidentiary hearing; 2) recent changes in the law, such as statutory amendments or new case law that was unknown to the Board and the parties at the time of an appellate review or evidentiary hearing. Restating arguments or positions that were raised in the hearing but rejected by the Board does not constitute grounds for a reconsideration. If the request for reconsideration does not comply with the above requirements, the Chair may dismiss it without further hearing. If the request for reconsideration complies with the above requirements, the Board shall meet within 15 days to decide whether to reconsider its prior decision. If the Board decides to reconsider its prior decision, it shall set forth the procedures to be followed during the reconsideration.

Board Member Request. Any Board member who voted in the majority on the final decision may ask for a reconsideration of this decision. This request must be made to the Chair within two days of the original decision. This request will be granted automatically. A special meeting to reconsider will be scheduled no later than a week after the request. The Planning Department will notify all interested parties of the special meeting.

Public Review

It is very important for the public to be able to review pending Board of Appeals applications. Accordingly, the following procedure is established:

1. A full copy of one of the application binders, along with any large-format exhibits will be available to the general public for review in the Planning Department.
2. The other application binder and one copy of any large-format exhibits will be maintained in a secure file to which only staff has access. Members of the public wishing to review the secure copy must file a citizen's "right to know law" request as provided by state law and will be supervised by staff as they review the file. A record of public access requests granted will be maintained in the file.