

**TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS**

INSTRUCTION SHEET

Dear Applicant:

The Board of Adjustment and Appeals meetings are held on the second Thursday of every month. **All** forms and information are to be submitted on the **Thursday, two weeks prior to the meeting.**

Please fill out the form completely to expedite processing, and return with the **\$100.00 application fee.**

Before filling out the form, please be absolutely sure you understand the applicable sections of the Cumberland Zoning Ordinance. If you have any questions, the Code Enforcement Officer or staff person will be most happy to assist you.

File with your form a plot plan of the property in question, drawn generally to scale, showing EXACT distances from buildings (if any) to all lot lines, on 8 1/2 x 11 inch paper (or larger), and showing location and distances to all public and private rights of way. **Please provide ten (10) copies of your application and plans.** You may wish to present other maps, drawings, etc. to the Board which will support your application.

At your hearing, you will be expected to present as strong an argument for your application as you can. While members of the Board may ask you for information and documentation, it is not our function to make your case for you.

The format of your hearing will be as follows:

1. You will be asked to present your position to the Board.
2. Opponents and proponents will be asked for their comments.
3. Board members may wish to ask you, opponents, and proponents for information, documentation and certain other facts.

When the Board is satisfied that all have been adequately heard, they will vote to "close the public portion" of the hearing. This means that the Board will participate in further discussion while you, the other participants in your hearing and the public are entitled to stay and observe our debate and votes.

Finally, we solicit your understanding that as fellow citizens, appointed to the Board by the Cumberland Town Council, we must operate within the strict limitations placed upon us by the Cumberland Zoning Ordinance and the laws of the State of Maine, and do not, therefore, enjoy broad discretionary powers.

Sincerely,

CHAIRMAN
Board of Adjustment & Appeals

**TOWN OF CUMBERLAND
BOARD OF ADJUSTMENT AND APPEALS
RULES OF PROCEDURE**

1. No business may be transacted by the Board without a quorum, consisting of four members. The concurring vote of a majority of those voting, but at least three votes, is necessary to grant any application. If any matter fails to receive a favorable vote of a majority of the Board members voting, the application will be deemed to have been denied.
2. All testimony must be presented at the podium so that it can be recorded. Testimony will be videotaped. The videotape will be available for inspection at the Town Office during regular business hours.
3. Applicants will first state their case and may present testimony and offer evidence. The burden of proof is on the applicant to present all the evidence the Board needs to determine whether the project will comply with every applicable requirement of the Ordinance. Applicants are strongly encouraged to provide with their written submissions all evidence in support of their application.
4. Following the conclusion of the applicant's case, members of the public may present testimony and offer evidence, in the following order: first, those in favor of the application; second, those opposed to the application; and third, those neither for nor against the application.
5. Applicants may then offer rebuttal evidence.
6. Parties, acting through the Chair, may cross-examine witnesses. The Chair may limit irrelevant, immaterial, or unduly repetitious testimony. Members of the Board may ask questions at any time, with the permission of the Chair.
7. At the conclusion of the rebuttal evidence, the public portion of the proceeding will be closed, and the Board will rule on the application pursuant to the applicable provisions of Cumberland's Zoning Ordinance and Maine law. The Chair may reopen the public portion during deliberations if the Chair determines it is necessary to do so in the interests of a full and fair hearing and a complete record.
8. After a decision has been made, the Board will not entertain a new appeal of similar import concerning the same property until one year has elapsed from the date of the decision, unless the Chair believes that an injustice was done because of a mistake of law or misunderstanding of fact or if the Chair believes a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.
9. The Board's procedures also are governed by Maine law (30-A M.R.S.A. §§ 2691 and 4353, or any successor statutes) and Section 603 of Cumberland's Zoning Ordinance.

These rules were adopted on December 12, 2002, pursuant to 30-A M.R.S.A. § 2691(3)(C).

BY: _____

Signed _____

Special Exception standards, Section 603.2.3

- .1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;**
- .2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;**
- .3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;**
- .4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;**
- .5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;**
- .6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;**
- .7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;**
- .8 If located in a shoreland zone, the proposed use (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use. [Amended, effective 12/2/86]**

Section 603.2.7

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

- .1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;**
- .2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;**
- .3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;**
- .4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and**
- .5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed. [Amended, effective 12/2/86]**

Sec. 414

Home Occupations and Home-Based Occupations

- 414.1 Any home occupation or home-based occupation may be approved as a special exception by the Board of Adjustment and Appeals if:
- .1 The occupation is owned or operated by a member of the family residing within the dwelling unit, and;
 - .2 In the case of a home occupation, no more than two employees who are not members of the family are employed in the occupation, and;
 - .3 In the case of a home-based occupation, no more than two employees who are not members of the family are present at the dwelling at any one time, and;
 - .4 Objectionable or unreasonable noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare will not be detectable beyond the property limits, and;
 - .5 No traffic in substantially greater volumes than would be normally expected in the neighborhood will be generated, and;
 - .6 Off-street parking spaces are provided in an amount to be determined by the Board to avoid street congestion, and;
 - .7 Exterior displays, exterior storage of materials, and exterior indications of the home occupation or home-based occupation, including signs, are inconspicuous.

A home occupation or home-based occupation does not require approval as a special exception if the seven (7) conditions above are met and it does not result in any exterior indications (including, without limitation, any visual, sound, odor, or traffic indications outside of the dwelling or accessory structure) of the existence of the home occupation or home-based occupation, and does not pose any potential threat to public health, safety, or welfare. [Amended 6/27/06, effective 6/27/06]

- 414.2 The granting of a special exception approval for a home occupation shall apply to the applicant only while the applicant resides at the property.

407.1 Accessory Apartments

Any single-family dwelling or an existing accessory structure, which is either attached or detached, to the dwelling may be altered or expanded to include one apartment unit subject to the approval of the Board of Adjustment and Appeals as a special exception, and in accordance with the following standards:

- .1 The unit to be added shall include no more than one bedroom and shall not exceed 40% of the total living area of the building; [Amended, effective 5/15/89]
- .2 The board may waive the lot size requirements, provided that the Plumbing Inspector indicates adequate capacity and conformity with the State Plumbing Code; but in no case shall such conversion be allowed on a lot smaller than 20,000 square feet.
- .3 This provision shall not prohibit the conversion of a single-family dwelling to a duplex or multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling, so long as said conversion complies with all district and other zoning standards, including, but not limited to the minimum lot size per dwelling unit. [Amended, effective 5/15/89]
- .4 An accessory apartment may be constructed in a detached accessory structure provided that the lot standards, and the setback requirements from the single-family dwelling to the accessory structure, for the district in which it is located cannot be met for each structure. The parcel on which the single-family dwelling and the detached accessory structure are located cannot be split so that each structure is on a separate parcel. [Amended, effective 8/10/98]