

# **TOWN OF WALES LAND USE ORDINANCE**

Final Draft Date: May 30, 2009

Note: This ordinance replaces the ordinance adopted June 11, 2005

Adopted: June \_\_\_\_, 2009

## **Article 1. Purposes**

The purpose of this ordinance is to protect the health, safety, and welfare of the citizens of the town of Wales and to protect the environment and natural resources of the town by allowing for development that must meet certain performance standards.

## **Article 2. Authority, Applicability, Administration, Effective Date, Repeal of Existing Ordinance**

### **2.1 Authority**

- A. This ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and Title - 1 - 30-A, M.R.S.A. § 3001.
- B. These standards shall be known and may be cited as “Land Use Ordinance of the Town of Wales, Maine” and shall be referred to herein as “this Ordinance.”

### **2.2 Applicability**

The provision of this ordinance shall apply to all land, structures, and new driveway entrances within the boundaries of the town of Wales that are not covered under the provisions of the “Shoreland Zoning Ordinance, Town of Wales.” No structure shall hereafter be constructed, relocated, placed, replaced, demolished, converted, or altered unless it is in conformance with the provisions of this Ordinance. No driveway entrance shall hereafter be constructed, relocated, placed, replaced, or altered unless it is in conformance with the provisions of this Ordinance.

### **2.3 Effective Date**

The effective date of this Ordinance shall be the date of the 2009 Town Meeting of the Town of Wales held on June , 2009.

### **2.4 Repeal of Prior Ordinances**

This Ordinance shall repeal the ordinance entitled “Land Use Ordinance of the Town of Wales, Maine” adopted June 11, 2005.

### **2.5 Relationship with Other Ordinances**

If any provisions of this Ordinance conflict with the provisions of the “Shoreland Zoning Ordinance, Town of Wales,” the provisions of the “Town of Wales Subdivision Ordinance,” or any other ordinances or regulations, then the stricter provisions shall apply.

### **2.6 Validity and Severability**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section of this Ordinance.

## **Article 3. Establishment of Districts**

### **3.1 Zoning Map**

A digital map entitled “Town of Wales” is hereby adopted as part of this Ordinance and shall be referred to as the Official Zoning Map. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of Selectmen and attested by the signature of the Town Clerk. The official Zoning Map shall be located in the office of the Town Clerk, and it shall be the final authority as to the current status of the zoning of the land and water areas, buildings, and other structures and uses in the town.

### **3.2 Zoning Districts**

The Town shall be divided into three primary Districts as shown on the Official Zoning Map. (Shoreland areas are described in the Town of Wales Shoreland Zoning Ordinance.) The three primary Districts shall be known as the:

Growth District

General Use District

Limited Rural District

### **3.3 District Boundaries**

- A. Uncertainty of Boundaries - Where uncertainty exists with respect to the boundaries of the various districts as shown on the Official Zoning Map, the following rules shall apply:
1. Boundaries indicated as approximately following the center lines of streets, highways, or right-of-way shall be construed to follow such center lines;
  2. Boundaries indicated as approximately following well-established lot lines shall be construed as following such lot lines;
  3. Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
  4. Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline;
  5. Boundaries indicated as being parallel to or extensions of features indicated in Paragraphs (1) through (4) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map. Any conflict between the Official Zoning Map and a description by metes and bounds in a deed shall be resolved in favor of the description by metes and bounds.
  6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in circumstances where the items covered by Paragraphs (1) through (5) above are not clear, the Board of Appeals shall interpret the district boundaries.

B. Division of Lots by District Boundaries - Where a zoning district boundary line divides a lot or parcel of land in the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended into the more restricted portion of the lot by not more than twenty (20) feet, provided that the more restricted portion is not a Resource Protection District, and provided further, that minimum side setback and yard and rear setbacks and yard requirements for a non-residential use abutting a residential use shall be observed.

C. District Boundaries are defined as follows:

All references to tax map and lot number shall be to the Town of Wales tax maps dated April 1, 2004.

1. Sabattus Mountain Limited Rural District shall consist of the area identified as follows:

The Sabattus Mountain Limited Rural District shall include that area bounded and described as follows: Beginning at the southwest corner of Map R-2, Lot 28-5A and proceeding in a generally easterly direction along the northerly line of Map R-2, Lot 30 approximately 1160 feet to the northeast corner of Lot 30, thence in a generally southerly direction along the easterly line of Lot 30 and Lot 31 a distance of approximately 3000 feet to Lot 46, thence in a generally easterly direction along the northerly line of lot 46 approximately 460 feet to the north east corner of Lot 46, thence in a generally southerly direction along the easterly line of Lot 46 approximately 875 feet to a point, thence westerly along the line of Lot 46 approximately 550 feet to a point, thence southerly along the easterly line of Lot 46 approximately 650 feet to a point, thence south westerly along the line of Lot 47 approximately 1750 feet to the Wales/Sabattus town line, thence westerly along said town line approximately 150 feet to Map R-2, Lot 47, thence in a generally northerly direction approximately 2750 feet to the south east corner of Map R-2, Lot 35, thence in a north westerly direction along the easterly line of Lot 35 approximately 1350 feet to the north east corner of Lot 35, then in a north easterly direction approximately 1800 feet to the point of beginning.

2. Oak Hill Limited Rural District. The Oak Hill Limited Rural District shall include the following lots: Map R1, Lots 31, 32, 33, 34, 34, 35, 45, 47B, 47C, & 48, and Map R4, Lots 35 & 36.
3. Pond Road/Centre Road Growth District. The Pond Road/Centre Road Growth District shall include the following lots; Map R3, Lots 42, 45, 45A, 45B, 45-1, 45-2, 45-3, 45-4, 45-5, 45-6, 45-7, 46, 54, 59, 60A, 61 & 62.
4. Gardiner Road Growth District. The Gardiner Road Growth District shall include the following lots; Map R1, Lots 16, 16-1, 16-2, 16-3, 16-4, 16-5, 16-6, 16-7, 16-8, 16-9, 16-10, 16-11, 16-12, 16-13, 16-14, 17 and Map R4, Lots 44 & 44A.
5. General Use District

The General Use District includes all land areas in the Town of Wales not included in the Growth Districts or the Limited Rural Districts described above.

### 3.4 Allowed Uses By District

<b>Allowed Uses By District</b>			
	<b>General</b>		
<b>Use</b>	<b>Use</b>	<b>Growth</b>	<b>Limited Rural</b>
Agriculture	Y	Y	Y
Auto Graveyard, Junkyard	Y		
Bed & Breakfast	Y	Y	Y
Campground	Y	Y	
Cemeteries	Y	Y	Y
Clubs, lodges, Community Buildings	Y	Y	
Day Care Center	Y	Y	
Day Care Home	Y	Y	Y
Elderly Housing	Y	Y	Y
Essential Services <sup>1</sup>	Y	Y	Y
Forestry	Y	Y	Y <sup>2</sup>
Gas Station, Repair Garage	Y		
Home Occupation	Y	Y	Y
Highway and Mall Stores/Services	Y		
Institutional and Cultural Facilities		Y	
Manufacturing, Light Industrial	Y		
Mobile Home Park		Y	
Mobile Homes	Y	Y	Y
Motel, Hotel, Inn	Y		
Multi-Family		Y	
Neighborhood Stores & Services	Y	Y	
Nursing or Convalescent Home	Y	Y	
Open Space Uses	Y	Y	Y
Personal and Financial Services	Y		
Parks	Y	Y	
Professional Offices	Y		
Public Buildings, Churches, Etc.	Y	Y	
Recreation (Walking Trails)	Y		Y
Single Family Residential	Y	Y	Y
Two-Family Residential	Y	Y	Y

Uses Similar to Allowed Uses are allowed

Other Uses Allowed by Statute are allowed

Wireless Telecommunications Facilities/Towers (See Telecom. Siting Ord.)

<sup>1</sup> Essential Services shall be subject to approval under the Site Plan Review Ordinance and shall be exempt from Article 4 of this Land Use Ordinance.

<sup>2</sup> For the purposes of this ordinance forestry for the limited growth area is limited to selective cutting.

## **Article 4. Lot Standards**

### **4.1 Lot Size Standards for New Lots**

- A. No building permit shall be issued for any structure on any new lot that is created after June 27, 1996 unless such lot has at least 80,000 square feet and is able to contain within its boundaries a circle having a radius of 70 feet, unless such lot is part of an approved open space subdivision.
- B. No building permit shall be issued for any structure on any new lot that is created after June 11, 2005 in any district other than a Growth District unless the lot contains a contiguous building envelope of at least 40,000 square feet which does not include any wetlands.
- C. No building permit shall be issued for any structure on any new lot that is located in the shoreland zone, as defined, and that is created after the effective date of this Ordinance, unless such lot complies with the minimum lot requirements in the “Shoreland Zoning Ordinance, Town of Wales.”
- D. No building permit shall be issued for any structure on any new lot that is located in a mobile home park, as defined, and that is created after the effective date of this Ordinance, unless such lot complies with the minimum lot requirements in the “Town of Wales Subdivision Ordinance.”
- E. No building permit shall be issued for any multi-family structure on any new lot that is created after June 27, 1996 unless such lot has at least 80,000 square feet for the first dwelling unit and at least 20,000 square feet for each additional dwelling unit. For projects in the Growth Districts involving affordable elderly housing only, applicants can elect to calculate the land area required as 80,000 square feet for each 3 bedrooms in the development.

### **4.2 Frontage Requirements for New Lots**

- A. No building permit shall be issued for any structure on any new lot that is created after June 27, 1996 unless such lot has at least 200 feet of continuous frontage on a public or private road, unless such lot is part of an approved open space subdivision. The frontage measurement shall not include any area encumbered by easements or rights-of-way.
- B. No building permit shall be issued for any structure on any new lot that is created after June 27, 1996 that does not have frontage on a public or private road, unless the new lot is served by a 30-foot deeded right-of-way and designed as a common driveway in accordance with the Town of Wales Road Ordinance. Up to 3 dwelling units may be served by a common driveway.
- C. No building permit shall be issued for any structure on any new lot that is located in the shoreland zone, as defined, and that is created after the effective date of this Ordinance unless such lot complies with the minimum shore frontage requirements in the “Shoreland Zoning Ordinance, Town of Wales.”
- D. No building permit shall be issued for any structure on any new lot that is located in a mobile home park, as defined, and that is created after June 27, 1996, unless such lot complies with the minimum frontage requirements in the “Town of Wales Subdivision Ordinance.”

### **4.3 Setback Requirements for Structures on All Lots**

- A. All principal structures on any lot shall conform with the following setbacks:
  - 1. at least 25 feet from a right-of-way line of a public or private road;
  - 2. at least 25 feet from a side or rear property line;
  - 3. the setbacks required in Section 15B of the “Shoreland Zoning Ordinance, Town of Wales;”
- B. All accessory structures on any lot shall conform with the following setbacks:
  - 1. at least 25 feet from a right-of-way line of a public or private road;
  - 2. at least 10 feet from a side or rear property line;
  - 3. the setbacks required in Section 15B of the “Shoreland Zoning Ordinance, Town of Wales.”

## **Article 5: Additional Standards**

### **5.1 Accessory Structures**

An accessory structure that does not exceed 144 square feet in floor area and 10 feet in height does not need a building permit, as long as the structure complies with the setback requirements from a right-of-way line and the side or rear property lines.

### **5.2 Lots Divided by a Zoning Line**

When a new lot created after the effective date of this Ordinance is divided by a zoning line, the location of the proposed structure will determine whether the lot must comply with the provisions of this Ordinance, the provisions of the “Shoreland Zoning Ordinance, Town of Wales,” or the provisions of the “Subdivision Ordinance of the Town of Wales, Maine.” If the proposed structure is divided by a zoning line, then the stricter provisions will apply.

### **5.3 Driveway Entrances**

- A. The Road Commissioner is responsible for reviewing driveway entrances for any parcel of land on which agricultural or timber-harvesting uses will be conducted or on which will be built a new structure for a residential, commercial, or industrial unit.
- B. A driveway “entrance permit” issued by the town Road Commissioner is required for any new driveway, access way, or other road/street opening which provides access to and from a town road or a proposed town road prior to the issuance of a building permit. Other requirements, unless granted a waiver by the Road Commissioner, are as cited in the “Road Ordinance of the Town of Wales, Maine” and as follows:
  - 1. Sight distance in each direction is equal to or greater than 10 times the posted speed limit for the section of the road where the driveway entrance is located.
  - 2. If required in the driveway entrance permit, a plastic culvert, 15 inches or greater in diameter, with a minimum length of 30 feet and a maximum length of 40 feet, and a minimum of 18 inches of cover, is installed in accordance with

the Town of Wales Road Ordinance, and inspected by the Road Commissioner, his/her agent, or the Maine Department of Transportation as appropriate, in order to prevent the interruption of road drainage. The cost of said culvert installation and inspection shall be borne by the property owner or the developer.

3. Inlet and outlet ditches are constructed in such a manner as to prevent ponding of the road drainage.
- C. The Road Commissioner shall determine what standards must be met in order for a driveway entrance permit to be issued. The Road Commissioner may reduce, by no more than 30% the standards for sight distance, culvert diameter, minimum length of the culvert, or the amount of culvert cover. When the standards are reduced, the Road Commissioner may require, as applicable, the trimming of vegetation, the installation of "hidden drive" signage, the installation of a larger culvert, or additional ditching.
- D. The landowner is responsible for constructing the driveway entrance to the standards stated in Article 5.3.B and to the Road Commissioners satisfaction.
- E. The town will maintain the culverts at driveway entrances that comply with 5.3 A through D. above and be responsible for the cost of said maintenance. The town will only be responsible for culverts when a driveway entrance permit is obtained.
- F. No application for a building permit that requires access from a town road will be approved unless a driveway entrance permit has been obtained from the Road Commissioner.
- G. The location of any new structure shall not interfere with existing road drainage.
- H. No building permits shall be issued for lots within a subdivision of 3 or more units unless access to said lots is on interior subdivision roads.

#### **5.4 Mobile Homes**

No building permits shall be issued for the placement of a mobile home or a manufactured home that will be used as a residential unit unless all of the following requirements are met.

- A. The site complies with the Manufactured Home Installation Standard promulgated by the State of Maine, Department of Professional Regulation, Manufactured Housing Board, dated March 31, 1993, and as amended from time to time.
- B. The mobile home or the manufactured home is certified to be in compliance with standards adopted pursuant to Title 10, MRSA § 9041.
- C. No fuels or flammable materials shall be stored under mobile homes, except as allowed by state regulations.

#### **5.5 Pools**

All new in-ground pools shall be surrounded by a permanently installed fence and gate(s). The fence and gate(s) shall be no more than 2 inches from ground level and shall be a minimum height of 4 feet. The design of the fence and gate(s) shall allow for normal access only through the gate(s). The gate(s) shall be designed to open only outward away from the pool and shall be spring-operated to maintain the gate(s) in a closed and latched position.

## **5.6 Additional Principal Residential, Commercial, and Industrial Units**

- A. No more than one principal residential, commercial, or industrial unit is allowed on either a legally created non-conforming lot or on a lot that meets the minimum lot size and frontage requirements of this ordinance.
- B. If more than one principal residential, commercial, or industrial unit is constructed on a lot that meets or exceeds the minimum lot size and frontage requirements of this ordinance and the additional unit is in the same structure as the first unit, then the setback requirements in Article 4.3 of this Ordinance must be met and the following dimensional requirements shall be met for each additional unit.
  - 1. 20,000 square feet over and above the first unit's requirements;
  - 2. 50 feet of road frontage over and above the first unit's requirements.
- C. If more than one principal residential, commercial, or industrial unit is constructed on a lot that meets or exceeds the minimum lot size and frontage requirements of this ordinance and the additional unit is not in the same structure as the first unit, then the setback requirements in Article 4.3 of this Ordinance must be met and the following dimensional and other requirements shall be met for each additional unit.
  - 1. The lot size standards noted in Article 4.1 of this Ordinance.
  - 2. The frontage requirements noted in Article 4.2 of this Ordinance.
  - 3. A separate deed describing the parcel on which the additional unit will be constructed must be recorded in the Registry of Deeds before a building permit can be issued.

## **5.7 Foundation Standards for Residential Dwelling Units**

When a new concrete slab is to be used as a foundation for a residential dwelling unit, the concrete slab shall comply with the following construction standards.

- A. The minimum thickness of the concrete slab is 6 inches.
- B. Concrete shall have a minimum compressive strength of 3000 psi at 28 days.
- C. The concrete slab shall incorporate 6x6-6x6 W.W.F. and #5 deformed bar, continuous, as noted in Concrete Slab Detail IV-A in the Manufactured Home Installation Standard promulgated by the State of Maine, Department of Professional Regulation, Manufactured Housing Board, dated March 1, 1993, and as amended from time to time. W.W.F. is per ASTM A185, F=65 ksi.
- D. Compacted fill under the concrete slab shall be a minimum of 18 inches in depth and shall comply with the general specifications for site preparation and site preparation detail I-A, I-B, or I-C as noted in the above mentioned Manufactured Home Installation Standard.
- E. Fill and concrete slab shall not be placed on frozen ground.
- F. Anchoring for the dwelling unit into the concrete slab shall comply with current construction standards.

## 5.8 Miscellaneous Standards

- A. Whenever a new building is to be located adjacent or in close proximity to existing agricultural, forestry or commercial user which is not compatible with residential use, buffers consisting of natural vegetation, new vegetation, berms, fences or structures shall be developed and/or maintained to minimize potential conflict between the incompatible uses. When required, this will be a condition of the building permit.
- B. Phosphorous Export
1. Phosphorous export from a proposed project shall be calculated according to the procedures defined in Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). Upon request, copies of all worksheets and calculations shall be made available to the Board.
  2. Phosphorous-control measure shall meet the design criteria contained in Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). The Board shall require the reasonable use of vegetative buffers, limits on clearing, and minimal road lengths and shall encourage the use of other nonstructural measures prior to allowing the use of high-maintenance structural measures such as infiltration systems and wet ponds. Where buffers can be designed and maintained to remove 75% of the phosphorus in accordance with Table 6.1 of Stormwater Management for Maine: Best Management Practices, it will be assumed that the project meets this standard.
- C. Development in the Limited Rural District
- All proposed development in a Limited Rural District shall be of the open space design to preserve agriculture, forestry, wildlife habitat and scenic resources. The maximum density shall be one dwelling unit or other principal use per 3 acres. A minimum of 50% of any parcel developed shall forever remain open space.

## Article 6: Nonconforming Provisions

### 6.1 General

Nonconforming lots and structures may be transferred, and the new owner may continue to use the nonconforming lot or structure, subject to the provisions of this Article.

Normal upkeep and maintenance of a nonconforming structure, including repairs and renovations that do not involve expansion of the nonconforming structure, are allowed.

### 6.2 Non-conforming Lots of Record

- A. Vacant Lots
1. Nonconforming vacant lots of record that are part of a subdivision previously approved by the Wales Planning Board or Selectmen and recorded at the Androscoggin County Registry of Deeds at the time of the adoption of this

Ordinance, and that are not located in the shoreland zone, may be built upon provided that setback requirements are met and that all other requirements of this Ordinance and State law are met.

2. Any other legally created nonconforming lot of record may be built upon, provided that such lot of record is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size, lot width, or lot frontage can be met. Variance of setbacks or other requirements not involving area, width, or frontage can be obtained only by action of the Board of Appeals.
3. If two or more contiguous lots of record are in the same single or joint ownership on or after the effective date of this Ordinance, and if either or both of these lots do not individually meet the dimensional requirements of this Ordinance, and either of the lots are vacant or contain only principal or accessory structure, then the lots shall be combined to the extent necessary to meet all dimensional standards, except where rights have been vested.

#### B. Built Lots

1. A structure on a conforming or nonconforming lot of record that was built prior to the adoption of this Ordinance may be subject to the restrictions in Article 6.3.
2. If two or more contiguous lots of record are in the same single or joint ownership on or after the effective date of this Ordinance, and if either or both of these lots do not individually meet the dimensional requirements of this Ordinance, and if a principal structure exists on each lot, then the nonconforming lots of record may be conveyed separately or together in accordance with the State Minimum Lot Size Law and the State Plumbing Code.

### **6.3 Nonconforming Structures**

A nonconforming structure may be added to or expanded after a permit has been obtained from the Code Enforcement Officer as long as such expansion does not extend the nonconformity any farther toward the setback line (front, side, rear, shore) beyond the most nonconforming point of the existing structure.

### **6.4 Nonconforming Provisions for the Shoreland Zone**

All lots of record and structures located in the shoreland zone shall comply with the nonconforming provisions of the “Shoreland Zoning Ordinance, Town of Wales”.

## **Article 7: Administration**

### **7.1 Code Enforcement Officer**

This ordinance shall be administered by a Code Enforcement Officer (CEO) who shall be appointed or reappointed annually by the Selectmen. The CEO shall inspect all lots and structures for compliance with, and for the enforcement of, the provisions of this Ordinance. The CEO, in the performance of his/her duties, shall have the right to enter any property at reasonable

hours or to enter any structure with the consent of the owner, occupant, or agent to inspect the property for compliance with this Ordinance.

## **7.2 Permits**

A building permit shall be obtained from the CEO, except as allowed under Article 5.1, prior to any construction, relocation, placement, replacement, demolition, conversion, or alteration that changes the square footage or volume of any structure or part thereof. A permit for a driveway entrance shall be obtained from the Road Commissioner or the Maine Department of Transportation as appropriate, as outlined in Article 5.3, prior to obtaining a building permit from the CEO.

## **7.3 Application for Permit**

A permit required under the provisions of this Ordinance and permits required from the Planning Board (PB) and the CEO under the provisions of the “Shoreland Zoning Ordinance, Town of Wales,” shall be submitted to the CEO on application forms provided by the CEO. Exterior or interior plumbing permits required by State Plumbing Code and, where applicable, proof of payment of sales tax or current property taxes for mobile homes as required by State Law shall be submitted with the application.

## **7.4 Permit Fees**

The Selectmen, after holding a public hearing, shall establish a schedule of reasonable fees for the administration of this Ordinance, including but not limited to building permit fees, driveway entrance permit fees, CEO permit fees, PB application fees, and Board of Appeals application fees.

## **7.5 Permit Application Procedure**

Within 7 days after receipt of an application for a building permit, the CEO shall determine if the application is complete. Completeness of the application shall consist of the payment of the building permit fee, exterior and interior plumbing permits as needed, proof of payment of sales tax or current property taxes as needed, a letter of authorization as needed, and the information requested on the building permit application. Failure to submit the necessary information in order for the CEO to understand what the applicant wishes to do will automatically result in a decision, by the CEO, of incompleteness of the application.

If the CEO determines that the application is incomplete, then the CEO shall notify the applicant in writing within 7 days of the CEO’s determination. The CEO shall note the information that is required in order for the application to be deemed complete. The CEO’s decision that the application is incomplete can be appealed to the Board of Appeals.

## **7.6 Action on a Complete Application**

Once an application has been found to be complete by the CEO, the CEO shall have 14 days in which to refer the application for a building permit to the PB where required under the provisions of the “Shoreland Zoning Ordinance, Town of Wales”, to approve the application for a building permit; to approve the application for a building permit with conditions; or to deny the

application for a building permit. The CEO's decision under the provision of Article 6.6 can be appealed to the Board of Appeals.

### **7.7 Applications Referred to the Planning Board**

Within 45 days of receipt of a completed application from the CEO, the PB shall approve the application for a building permit, approve the application for a building permit with conditions, or deny the application for a building permit. The decision of the PB under the provisions of Article 7.7 can be appealed to the Board of Appeals.

### **7.8 Term of Permit**

Any activity authorized under the issuance of a building permit shall be completed within 12 months of the issuance of the permit. If the activity authorized under the building permit has not been substantially completed, then the authorized activity must cease, and a new building permit must be applied for.

## **Article 8: Appeals**

### **8.1 Responsibility of the Board of Appeals**

The Board of Appeals (BOA) shall have the responsibility to hear and act upon requests for variance and administrative appeals, as defined, in accordance with State Law and this Ordinance.

### **8.2 Appeal Procedure**

- A. A variance appeal may be received by the BOA at any time. An administrative appeal shall be received by the BOA within 30 days of the date of the decision that is being appealed, except that the BOA, upon a showing of good cause, may waive the 30-day requirement.
- B. A variance or administrative appeal shall be filed with the BOA on appeal forms provided by the BOA.
- C. Upon being notified of an appeal, the CEO and the PB, where applicable, shall provide the BOA with copies of all documents pertaining to the decision that is being appealed. The BOA may receive any oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct any cross-examination that is required for a full and true disclosure of facts.
- D. The burden of proof shall be upon the person making the appeal.
- E. The BOA shall hold a public meeting on the appeal within 35 days of the receipt of an appeal request. The BOA shall notify abutters, by certified mail, at least 10 days before the date of the public meeting.

### **8.3 Conditions of a Variance Appeal**

- A. Variance may be granted only from dimensional requirements, including but not limited to frontage, lot width, percentage of lot coverage, percentage of structure expansion, and setback requirements.
- B. Variances may be granted only if the BOA finds that all provisions of this Ordinance would be met except for the specific provision that is being appealed and that the strict application of the provisions of this Ordinance would result in undue hardship.  
Undue hardship means:
  - 1. that the land in question cannot yield a reasonable return;
  - 2. that the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
  - 3. that the granting of a variance will not alter the essential character of the locality; and
  - 4. that the hardship is not the result of action taken by the applicant or prior owner.
- C. Variances issued by the BOA shall be as strict as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible. The BOA may impose conditions on a variance as the BOA deems necessary. The party receiving the variance shall comply with any conditions imposed.
- D. Variances granted by the BOA shall be filed by the party receiving the variance in the Androscoggin Country Registry of Deeds within 90 days of the granting of the variance by the BOA. A variance not recorded within the 90-day period shall not be extended by the BOA and shall become void.

### **8.4 Decisions by the Board of Appeals**

- A. A majority of the members of the BOA shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
- B. The concurring vote of a majority of the members of the BOA present and voting must be necessary to make a decision.
- C. The BOA shall decide appeals within 35 days after the close of the public meeting.
- D. The BOA shall render its decision in writing, and this decision will become a part of the record. The decision shall include a statement of the findings of fact and of conclusions, with the reasons for these conclusions. In cases where the BOA decision is remanded back to the CEO or to the PB, the decision will include an appropriate order.

### **8.5 Reconsideration**

The BOA may reconsider any decision within 30 days of its prior decision. The BOA may conduct an additional hearing and receive additional evidence and testimony, subject to the provision of Article 7.2.C.

## **8.6 Appeal to Superior Court**

Any part aggrieved by a decision of the BOA may appeal to Superior Court in accordance with State Laws within 45 days of the original decision of the BOA.

## **Article 9: Enforcement**

### **9.1 Violations and Nuisances**

Any violation of this Ordinance shall be deemed a nuisance.

### **9.2 Enforcement Action by the Code Enforcement Officer**

- A. It shall be the duty of the Code Enforcement Officer (CEO) to enforce the provisions of the Ordinance. If the CEO finds that any provision of this Ordinance is being violated, the CEO shall notify in writing the person responsible for the violation as well as the owner of the property on which the violation occurred. The notice shall indicate the provision(s) of this Ordinance that is/are being violated, the corrective actions to be taken within a certain time period, and the possibility of fines if the corrective actions are not taken within the time period. The corrective actions could include the discontinuance of the illegal use of land and structure, the discontinuance of work being conducted, the removal of illegal structures, and/or the abatement of nuisance conditions. A decision by the CEO that any provision of this Ordinance is being violated is not appealable to the BOA.
- B. The CEO, in the performance of his/her duties, shall have the right to enter any property at reasonable hours or to enter any building with the consent of the owner, occupant, or agent to inspect the property or building for compliance with this Ordinance.

### **9.3 Legal Actions**

When the actions described in article 9.2 do not result in cessation, correction, or abatement of the violation and nuisance, the Board of Selectmen, upon notice from the CEO, may 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 Ordinance in the name of the Town of Wales. The Board of Selectmen may enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure to remain, unless there is clear and convincing evidence that the illegal structure was constructed as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner of the property acted in bad faith, or unless the removal of the structure will result in a threat or hazard to public health and safety or will result in substantial damage.

#### **9.4 Fines**

Any part, including but not limited to a landowner, a landowner's agent, or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A, MRSA, Section 4452.

### **Article 10: Definitions**

Unless specifically defined in the Town of Wales Definitions Ordinance, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application.