



# TOWN OF WINSLOW, MAINE

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114 Benton Avenue  
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Public Hearing: April 11, 2022

## TOWN COUNCIL

## ORDINANCE NO. 07-2022

### AN ORDINANCE

Providing for: An Amendment to Chapter 14, Article I, Section 14-19, Powers and Duties, replacing paragraph A with the underlined language attached and adding paragraph F.

**BE IT ORDAINED** by the Town Council of the Town of Winslow, as follows:

**WHEREAS**, whether appeals to the Zoning Board of Appeals should be appellate or de novo has caused considerable confusion and the Court of Law in two of the three main cases on the subject found that the zoning ordinance language required appellate review, and in the third a de novo hearing, despite many similarities in the language of each ordinance; and

**WHEREAS**, the wording of the present 14-19 (A) is not clear; and

**WHEREAS**, there has already been an adversarial hearing before the Planning Board; whereas a CEO decision is typically without any input from an adverse party; and

**WHEREAS**, Due Process requires the opportunity for adverse parties to be heard and this is accomplished with a de novo hearing of a CEO decision; and

**WHEREAS**, the ordinance is silent on the number of days in which an appeal can be made to the Board of Appeals and appeals from code enforcement decisions are to be made within 45 days, it is reasonable to establish the same time period for planning board decisions by adding paragraph F; now, therefore

**BE IT ORDAINED** by the Town Council that Chapter 14, Article I, Section 14-19, Powers and Duties, be amended by replacing paragraph A with the underlined language attached and adding paragraph F.

**SPONSORED BY:** Administration

### IN THE TOWN COUNCIL

April 11, 2022

First Reading 7 0  
accepted rejected

May 9, 2022

Second Reading 7 0  
adopted rejected

Erica Davidson  
Town Clerk

APPROVED: May 9, 2022

CHAIRMAN: [Signature]

[Signature]

[Signature]

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The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 14-19 Powers and duties.

~~A. The Board of Appeals shall hear and decide on appeals concerning alleged errors in any final decision made by the Code Enforcement Officer or Planning Board on applications for conditional uses.~~

A. Administrative appeals. To hear and decide administrative appeals, on an appellate 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 Planning Board in the administration of this article; and 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 article. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this article is not appealable to the Board of Appeals.

(1) 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.

(2) When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Article or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

- B. The Board of Appeals shall hear appeals made in accordance with this chapter within 45 days from filing. The Board of Appeals shall issue its written decision within seven days from the conclusions of the hearing on the appeal.
- C. The Board of Appeals has only the powers explicitly vested in it by this chapter.
- D. The Board of Appeals may request a recommendation from the Planning Board in considering variances.
- E. The Board of Appeals may conduct a site visit.
- F. Appeals from a planning board decision shall be made within 45 days of the decision.