



City of Caribou, Maine

*Municipal Building
25 High Street
Caribou, ME 04736
Telephone (207) 493-3324
Fax (207) 498-3954
www.cariboumaine.org*

**Caribou Planning Board
Regular Meeting
Wednesday, August 3, 2016 • 5:30 PM
Caribou City Council Chambers**

AGENDA

- I. Call Meeting to Order
- II. Approval of Minutes
 - a. July 6, 2016 Regular Meeting 2-3
- III. New Business

NONE
- IV. Old Business
 - a. Chapter 13 Revision Process 4
 - i. Discuss Chapter 13, Section 800 – Administration & Enforcement
Please review pages 922-933 at this website. Hard copies will be at the meeting.
<http://www.cariboumaine.org/wp-content/uploads/2013/02/Chapter-13-Zoning-Ordinance-2.pdf>
- V. Other Business
- VI. Adjournment



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Caribou Planning Board Meeting Minutes Wednesday, July 6, 2016 @ 5:30 pm City Council Chambers

In Attendance: Phil Cyr, Philip McDonough III, Todd Pelletier, Michele Smith, Evan Graves and Robert White

Members Absent: Matthew Hunter

Others in Attendance: Jim Chandler –Assistant City Manager & Code Enforcement Officer, Tim Roix – BR Smith Associates, Bert Levesque –Daigle Oil Company, Kip Griffin, Philip McDonough II –Councilor Liaison, Steve Wentworth, Penny Thompson –Tax Assessor & Building Official and Denise Lausier

- I. Call Meeting to Order** – The meeting was called to order at 5:30 pm.
- II. Approval of Minutes**
 - a. June 1, 2016 Regular Meeting** – Todd Pelletier moved to approve the minutes as presented; seconded by Philip McDonough III. 5-Yes; 1 Abstention (Robert White).
- III. New Business – None**
- IV. Old Business -**
 - a. Daigle Oil Company Diesel Pump Operations – Final Site Review** – The Public Hearing was opened at 5:31 pm. Tim Roix, Engineer with BR Smith and Bert Levesque from Daigle Oil Company were present. Tim Roix stated that nothing has changed since the last meeting. CEO Chandler stated that he has not received any public input prior to the meeting. He also questioned about the MDEP permit. Tim Rioux explained that once the facility upgrade is complete and a licensed tank installer signs off on it, they send to MDEP for a permit. CEO Chandler stated that staff recommends approval of this project. There was no public input. Robert White moved to approve the final site review application as submitted; seconded by Evan Graves. Vote was unanimous.
 - b. Griffin Used Automobile Site Design – Final Site Review** – The Public Hearing was opened at 5:43 pm. The applicant, Kip Griffin was present at this meeting to answer any questions. CEO Chandler stated that nothing has changed since the last meeting. Because this property is in the R-3 Zone, it requires Planning Board approval. CEO Chandler stated it was not necessary to go through the application checklist. Robert White moved to approve the application with waiver of the application checklist; seconded by Michele Smith. Vote was unanimous.

c. Chapter 13 Revision Process –

- i. Consider Revised Process Schedule-** This schedule has been given to the Board as a benchmark.
- ii. Consider Discussion of Items Distributed with June Packet-** This includes legal advice from the Maine Municipal Association Planning Board Manual and language from other communities to possibly copy and paste. The Board requested a copy of Chapter 13 with the proposed revisions they have made.

V. Other Business –Tax Assessor & Building Official Penny Thompson presented two non-conformance issues to the Board. She will be denying permits to applicants due to both situations being non-conforming. Building Official Thompson wanted to inform the Board in case the applicants decide to go the Planning Board to request a change in the ordinance in order to move forward with their plans.

Steve Wentworth recommends looking at mixed use zoning so that as times go forward more uses can fit in a space. CEO Chandler recommends looking at the zoning map, criteria on each zone, setbacks and the language itself, defining each zone and then applying them to the zoning map. Building Official Thompson stated that whatever is decided by the Board affects real people and needs to be equitable and defensible. Chairman Phil Cyr stated we need to adjust to the now and the Board needs to hear staff recommendations as well in this process.

VI. Adjournment – Todd Pelletier moved to adjourn the meeting at 6:19 pm; seconded by Robert White. Vote was unanimous.

Respectfully Submitted,

Robert White
Planning Board Secretary

RW/dl



OFFICE OF THE CITY MANAGER

CARIBOU, MAINE

Date: August 3, 2016

To: Chairman and Planning Board Members
From: Jim Chandler, Assistant City Manager
Subject: City Code Chapter 13-800 – Zoning Ordinance Revisions

Following our discussion at the July meeting, and brief presentation by Penny Thompson regarding the need to tighten-up our Appeals resources and processes, we will review this final section of Chapter 13 at this meeting.

Chapter 13 – Section 800 is found on our website and is contained on pages 922-933 of the current City Code.

Sec. 13-800 Administration and Enforcement.

1. General.

- A. The CEO shall administer and enforce these Ordinances. No applications for land use permits shall be accepted unless accompanied by any necessary fees, a copy of the deed to the property in question, a scaled site plan, and a general narrative of intended work to be submitted by the owner, authorized agent, and/or contractor.
- B. No land use permit or certificate of occupancy shall be issued for the construction, alteration, enlargement, moving, use, or change of use of any land or building unless the CEO determines that all of the requirements have been met and that the development shall conform in all respects to the applicable provisions of these Ordinances and with all other applicable federal, state, and local rules, laws, regulations, and ordinances.
- C. If application is made for a land use permit only, the application shall be accompanied by a fee. The fee shall be computed as follows: 1.) minimum fee: \$5; 2.) \$2 a thousand (\$) for the first \$10,000 of the estimated cost of improvement; and 3.) \$1 per thousand (\$) for every additional thousand (\$) over \$10,000 of the estimated cost of improvement or part thereof. If application is made for certificate of occupancy only, the application shall be accompanied by a fee of twenty-five dollars (\$25).

2. Land Use Permit.

- A. No building or structure shall be erected, altered, enlarged, or moved until a land use permit has been issued by the CEO. Permits shall expire annually on March 31 and may be renewed once. There shall be no additional fee if the original permit was issued within six (6) months prior to the March 31 expiration date. All intended construction and land use as stated in the original permit shall begin within the term of the permit issuance date. All applications for permits shall be in accordance with the applicable provisions of these Ordinances.
- B. Application for a land use permit shall be in writing and contain all information pertinent to the requirements of these Ordinances, including a statement setting forth the intended use of the proposed new, altered, or relocated building. The CEO shall issue the permit if they find, after proper examination of the application, that the building or structure and its intended use will comply with the provisions of these Ordinances.
- C. There shall be submitted with all applications for a land use permit, two (2) copies of a site plan drawn to scale showing: the exact dimensions of the lot to be build upon; all buildings, existing and proposed (location, shape, size, and height), setbacks; required off-street parking and loading spaces; existing, proposed, and such additional

information as may be necessary to determine and provide for enforcement of these Ordinances. A soil suitability test shall be obtained for construction on land not served by public sewer.

- D. One copy of the site plan shall be returned to the applicant when approved by the CEO who shall have marked such copy approved and attested to same by their signature on such copy together with the permit. The second copy of such application and plans, similarly marked, approved or disapproved, shall be retained by the CEO and shall be kept on file as a public record. Failure of the CEO to issue written notice of their decision within thirty (30) days of the date of filing of the application shall constitute refusal of the permit. A plumbing and electrical permit shall be obtained before a building permit is issued.
- E. If significant progress on construction has not been made within six (6) months from the date the permit was issued, the permit shall expire. Furthermore, all previous building permits issued by the City prior to the passage of this Ordinance shall expire six (6) months from the effective date of this Ordinance, unless significant progress in construction is made within this six (6) month period.

3. Certificate of Occupancy.

- A. No land use shall be changed in use, nor building or structure hereafter completed, altered, enlarged, or relocated, or changed in use until a Certificate of Occupancy has been issued by the CEO, stating that the proposed use complies with other applicable provisions of these Ordinances and with all other applicable federal, state, and local rules, laws, regulations, and ordinances. Any person who sells, leases, or occupies a new building in the City prior to the issuance of a Certificate of Occupancy by the CEO shall be in violation of these Ordinances and is subject to its penalties.
- B. An application for a Certificate of Occupancy shall be applied for at the same time of application for the land use permit. No permit for the excavation, erection, repairs, or alterations to any building shall be issued until an application has been made for a Certificate of Occupancy.
- C. A Certificate of Occupancy shall be required for the following uses:
 - 1. The increase in the number of dwelling units in a building.
 - 2. The establishment of any home occupation.
 - 3. A change in a non-conforming use of land or building.
 - 4. The occupancy and use or change of use of vacant land except for the raising of crops.
 - 5. A change in use of an existing building, whether or not alteration is involved.
- D. Prior to the issuance of the Certificate of Occupancy, the CEO shall check and determine that all requirements under the applicable provisions of these Ordinances and with all other applicable federal, state, and local rules, laws, regulations, and ordinances have been met.
- E. Any person desiring to change the use, but not the structure of the building or structure erected, or the use of the premises, shall apply in writing to the CEO for a Certificate of Occupancy setting forth the new use under the application. The CEO, under finding after examination that such new use complies with the provisions of these Ordinances, shall issue the Certificate of Occupancy applied for.

4. Code Enforcement Officer Shall Act.

The CEO shall act upon all applications for a land use permit or certificate of occupancy within fifteen (15) days after receipt of an application. Notice of refusal to issue the land use permit or certificate of occupancy shall be given to the applicant or their authorized agent in writing within fifteen (15) days of such application stating the reason for refusal.

5. Inspection.

- A. At least three (3) days prior to commencing construction of improvements, the applicant shall notify the CEO in writing of the time when the developer proposes to commence construction of such improvements, so that the CEO can cause inspection to be made to assure that all specifications, requirements, and conditions of approval, if applicable, shall be met during the construction of the improvements, and to assure the satisfactory completion of required improvements and utilities.
- B. If the CEO finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the applicant, the CEO shall so report in writing to the City Council, Planning Board, applicant, and developer. The City Council shall take any steps necessary to preserve the City's rights.
- C. If at any time before or during the construction of the required improvements it appears to be necessary or desirable to modify the improvements, the CEO is authorized to approve minor modifications due to unforeseen circumstances. The CEO shall issue any approval under these Ordinances in writing and shall transmit a copy of the

approval to the Planning Board. Revised plans shall be filed with the CEO. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1 percent, etc., the applicant shall obtain permission to modify the plans from the Planning Board.

- D. Prior to the sale of any lot, the applicant shall provide the CEO with a letter from a Maine Licensed Professional Surveyor stating that all artificial monumentation shown on the Plan has been installed.
- E. Upon completion of road construction and prior to a vote by the City Council, a written certification signed by the Director of Public Works shall be submitted to the City Council, certifying that the proposed public way meets or exceeds the design and construction requirements of these Ordinances. The applicant shall be required to maintain all improvements and provide for snow removal on roads and sidewalks until acceptance of the improvements by the City or their control is placed with a lot owners association. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility. "As built" plans shall be submitted to the City Council.

6. Code Enforcement Officer.

- A. It shall be the duty of the CEO to enforce the provisions of these Ordinances. If the CEO shall find that any provision of these Ordinances are being violated, the CEO shall notify the property owner and the person responsible for such violations in writing indicating the nature of the violations and ordering the action necessary to correct it. The CEO shall send a copy of such notice to the City Council and said notice shall be maintained as part of the permanent record. The failure of the CEO to follow the notice procedure set forth within this subsection shall not prevent the City Council from taking any legal action to enforce these Ordinances and to pursue all available legal remedies, including without limitation, injunctive relief, fines, and attorney fees. The CEO shall have the authority to issue a Stop Work Order upon a finding that work has been commenced or completed prior to receipt of all approvals required by these Ordinances or contrary to the terms of an approved site design. The CEO shall order the removal of illegal buildings, structures, additions, materials, or work being done, or shall take any other action authorized by these Ordinances to insure compliance with, or to prevent violation of, their provisions. Any construction or site work not in conformity with an approved plan and/or permit shall constitute a violation of these Ordinances. Work shall recommence only after such Order has been lifted.
- B. The CEO shall maintain the current addresses and phone numbers of federal and state agencies with which an applicant may want to check to determine what other rules, codes, laws, regulations, or ordinances apply to a proposed development. In addition, the CEO shall maintain a current file of all pertinent local statutes, ordinances, regulations, codes, and plans relating to land-use regulation. The CEO 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. On a biennial basis the CEO shall submit a summary of such record for the shoreland areas as defined to the Director of the Bureau of Land Quality Control within the Maine Department of Environmental Protection.
- C. The CEO shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to approval. The CEO may enter any property at reasonable hours and enter any structure with the consent of the property owner, occupant, or agent, to inspect the property or structure for compliance with the laws or ordinances. If consent is denied they should obtain an administrative warrant before entering the property. The CEO may revoke a permit after proper notification and an opportunity for a hearing if it was issued in error or if based on erroneous information.

7. Violations.

- A. The following provisions shall apply to all development plans reviewed and approved by the City.
 - 1. A person, shall not convey, offer, or agree to convey any land in a development which has not been approved by the Planning Board or CEO, whichever is applicable.
 - 2. Any person after receiving approval from the Planning Board or CEO who constructs the development in a manner other than depicted on the approved Plan(s) or amendment(s) or in violation of any condition imposed shall be in violation of these Ordinances.
 - 3. No public utility, water district, sanitary district, grading or construction of roads, grading of lands or lots, construction of buildings, or any utility company of any kind may install services to any development, until a Final Plan of such development shall be duly prepared, submitted, reviewed, approved, and endorsed and unless written authorization attesting to the validity and currency of all local permits required under these Ordinances has been issued. Following installation of service, the company or district shall forward the written authorization to the CEO indicating that installation has been completed to the development.
 - 4. No permit or certificate for a building or use shall be issued unless the development has been approved under these Ordinances and Title 38, §481-490, if applicable.

5. Whenever a development is exempt from MRSA Title 38, §481-490, Site Location of Development, because of the operation of Title 38, §488 (5), that fact must be noted on the Final Plan. The person submitting the Final Plan for recording shall prepare a sworn certificate that must be expressly noted on the face of the Final Plan. This certificate shall:
 - a. Indicate the name of the current property owner;
 - b. Identify the property by references to the last recorded deed in its chain of title and by reference to the development plan;
 - c. Indicate that an exemption from Title 38, §481-490, has been exercised;
 - d. Indicate that the requirements of Title 38, §488, (5), have been and shall be satisfied; and
 - e. Indicate the date of notification of the Department of Environmental Protection under Title 38, §488, (5).

In the case of a subdivision, the exemption is not valid until recorded in the Aroostook County Registry of Deeds, Northern Office. Recording must occur within ninety (90) days of the final subdivision approval or the exemption is void.

6. Any person who sells, leases, or conveys for consideration any land, dwelling unit, or building in a development approved under these Ordinances and exempt from Title 38, §481-490, because of the operation of Title 38, §488, (5), shall include in the instrument of sale, lease, or conveyance a covenant to the transferee that all of the requirements of Title 38, §488, (5), have all been and shall be satisfied.
- B. In addition to "A" above, the following provisions shall apply to subdivisions reviewed and approved by the City.
1. No plan of a division of land within the City which would constitute a subdivision shall be recorded in the Aroostook County Registry of Deeds, Northern Office until a Final Plan has been approved by the Planning Board in accordance with the Subdivision Ordinance contained within these Ordinances. Approval for the purpose of recording shall appear in writing on the recording plan.
 2. A person shall not sell, lease, or otherwise convey any land in an approved subdivision which is not shown on the Plan as a separate lot.
 3. No lot in a subdivision may be sold, leased, or otherwise conveyed before the road upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the road upon which the unit is accessed is completed in accordance with applicable standards contained within these Ordinances.
- C. When any violation of any provision of these Ordinances shall be found to exist, the CEO, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of these Ordinances in the name of the City of Caribou. The City Council, or their authorized agent, shall take any steps necessary to preserve the City's rights, such as, but not limited to, entering into an administrative consent agreement for the purpose of eliminating violations of these Ordinances 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 shall result in a threat or hazard to public health and safety or shall result in substantial environmental damage.

8. Fines.

Any person, firm, or corporation being the owner, authorized agent, contractor, or having control or use of any structure or premises who violates any of the provisions of these Ordinances shall upon conviction be fined in accordance with provisions of Title 30-A MRSA §4452. Each day such a violation is permitted to exist after notification shall constitute a separate offense. Fines shall be payable to the "City of Caribou".

Sec. 13-810 Appeals.

1. Making an Appeal.

- A. An appeal of an administrative decision of the Planning Board or CEO may be taken to the Board of Appeals by an aggrieved party. Such appeal shall be made within thirty (30) days of the decision appealed from, and not otherwise, except that the Board of Appeals, upon a showing of good cause, may waive the thirty (30) day requirement.

Note: For the purposes of this subsection, an administrative decision does not include enforcement actions. A decision of the CEO to take enforcement action for violations of these Ordinances, or any permit issued pursuant to these Ordinances, is not appealable to the Board of Appeals.

- B. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:
 - 1. A sketch drawn to scale showing lot lines, location of existing building, and other physical features pertinent to the variance request; and
 - 2. A concise written statement stating what variance is requested and why it should be granted.
- C. Upon being notified of an appeal, the Planning Board or CEO shall transmit to the Board of Appeals all the papers specifying the record of the decision appealed from. Each appeal shall be accompanied by a fee of ninety dollars (\$90) to cover advertising and administrative costs. If the actual cost of advertising and notification exceeds the fee paid, the applicant shall pay the balance. The Board of Appeals shall hold a public hearing on the appeal within forty-five (45) days.

2. Procedure on Appeal.

- A. At least fourteen (14) days prior to the date of the hearing on such appeal, the Board of Appeals shall cause to be posted in three (3) prominent locations in the City a notice which includes:
 - 1. The name of the person appealing.
 - 2. A brief description of the property involved.
 - 3. A brief description of the decision appealed from, or the nature of the appeal.
 - 4. The time and place of the Board of Appeal's hearing.
- B. At least ten (10) days prior to the date set for hearing, the Board of Appeals shall also cause the City Clerk to give similar written notice to:
 - 1. All abutting property owners of record whose properties lie within 200 feet of the affected property.
 - 2. The person making the appeal, and
 - 3. The Planning Board, the CEO, and any other parties of record.

3. Hearings.

- A. The Board of Appeals 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 shall have the right to present their case or defense by oral or documentary evidence to submit rebuttal evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.
- B. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.
- C. At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause. For example, if the Board of Appeals determines that the appeal before it was inappropriately classified the Board of Appeals shall give the applicant the opportunity to amend the application and continue the hearing until the public has been properly notified of the appeal's reclassification and of the time and place when the hearing shall continue.
- D. The CEO, or their designee, shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material deemed appropriate for an understanding of the appeal.
- E. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.
- F. The record may be kept open after the hearing by order of the Chair until a date established by the order.

4. Decisions of the Board of Appeals.

- A. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Planning Board or CEO, or to decide in favor of the applicant on any

matter on which it is required to pass under these Ordinances, or to affect any variation in the application of these Ordinances.

- B. The Board of Appeals shall decide all appeals in an open session within thirty (30) days after the hearing, and shall issue a written decision on all appeals.
- C. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented, and the appropriate order, relief, or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, their representative or agent, the Planning Board, the CEO, and City Council within seven (7) days of the decision date.
- D. Upon notification of the granting of an appeal by the Board of Appeals, the Planning Board or CEO shall immediately issue a permit in accordance with the conditions of the approval, unless the applicant's proposal requires additional review..
- E. Appeals may be taken within forty-five (45) days from any decision of the Board of Appeals to the Superior Court.
- F. Any Board of Appeals reconsideration of an original decision must be reconsidered and the proceedings completed within thirty (30) days of the vote on the original decision.
- G. The right to relief from the terms of these Ordinances granted by vote of the Board of Appeals in a specific case shall expire if the work or change is not commenced within six (6) months thereafter and if the work or change is not substantially completed within one year.
- H. A second appeal of a similar nature shall not be heard by the Board of Appeals within one year from the date of denial of the first appeal. However, re-appeal may be made to the Board if substantial new evidence shall be found or an error or mistake in law or misunderstanding of fact shall have been found.
- I. The Board of Appeals may impose such conditions and safeguards regarding location, character, fencing, screening, landscaping, or other features as it may deem advisable in furthering the intent and purpose of these Ordinances.
- J. The Board of Appeals, with the advice and assistance of the Planning Board and CEO, shall maintain a current map indicating by means of appropriate symbols, colors, or other notations the locations in which it has taken approving actions.

5. Variances.

The Board of Appeals shall have the power to hear and decide upon appeal a variation from the requirements of the Zoning Ordinance not in contradiction to the public interest in respect to a parcel of land or to an existing building thereon, where a literal enforcement of the Ordinance would result in unnecessary hardship. The Board of Appeals shall consider conditions and safeguards in conformity with this Ordinance in granting any variance by majority vote. The Board of Appeals shall not grant variances for uses forbidden ("NO") in any District indicated on the Caribou Land Use Chart. Variances may be permitted only under the following conditions:

- A. Variances are obtainable only for height, minimum lot size, frontage, structure size, setbacks and open space requirements.
- B. Variances can not, under any circumstances, be obtainable for establishment of any uses otherwise prohibited. Unless, after review by the Planning Board and the City Council, in accordance with the terms of this Ordinance, relief of unnecessary hardship or determine wherein relief may be granted and substantial justice done where conditions and safeguards are appropriate and in harmony, without derogating from the intent or purpose the Zoning Ordinance, but not otherwise. All three (3) Boards (Council, Planning, and Appeals) shall review and concur in the affirmative before a variance is granted for a use prohibited by the Board of Appeals.
- C. The Board shall not grant a variance unless it finds that all of the following criteria are met:
 - 1. That the land in question cannot yield a reasonable return unless a variance is granted. Such hardship may be found by the Board of Appeals where this Ordinance, as applied to the applicant's property, substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put; and
 - 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - 3. That the granting of a variance shall not alter the essential character of the locality; and
 - 4. That the hardship is not the result of action taken by the applicant or a prior owner. Mere inconvenience to the property owner shall not satisfy this requirement.
- C. A disability variance may be granted by the Board of Appeals to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. 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 property 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 on the property. For the purposes of this subsection, a disability shall have the same meaning as a physical or mental handicap under Title 5 MRSA §4553.

- E. The Board of Appeals shall limit any variances granted as strictly as possible in order to preserve the terms of the Ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary, to this end.
- F. A copy of all variances granted in Shoreland Areas by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the Board's decision.
- G. If the Board of Appeals grants a variance under this subsection, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of granting, shall be prepared in a recordable form by the Board of Appeals. This certificate must be recorded in the Aroostook County Registry of Deeds, Northern Office by the applicant within ninety (90) days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.
- H. The Board of Appeals shall notify the Chair of the City Council and the Planning Board in writing of any variance granted under the provisions of the Ordinance.

6. Stay of Proceedings.

An appeal stays all legal proceedings related to the action appealed from unless the CEO or Planning Board, from whom the appeal is taken, certifies to the Board of Appeals, after the notice of appeal has been filed with the CEO or Board of Appeals, that by reason of facts stated in the certificate a stay would, in the CEO's or Board of Appeal's opinion, cause irreparable harm to property or create a threat to the life or health of any person including the appellant. In such case, the CEO or Board of Appeals, if legally authorized by State law or local ordinance, may seek injunctive relief or, in appropriate cases, refer the matter to the City Council for prosecution.

Historical Note: Section 13-810 §1C as amended April 24, 2006.

Sec. 13-820 Planning Board.

1. Appointment.

- A. Planning Board members shall be appointed by the City Council and sworn in by the City Clerk or other person authorized to administer oaths.
- B. The Board shall consist of seven (7) members. Neither a municipal officer nor their spouse may be a member of the Board.
- C. The term of each member shall be three (3) years, except the initial appointments which shall be: 1 for one year, 1 for two (2) years, 1 for three (3) years, 1 for four (4) years, and 1 for five (5) years, respectively.
- D. When there is a permanent vacancy declared, the City Council may within sixty (60) days of its occurrence be required to appoint a person to serve for the unexpired term. A vacancy may be declared by the voting members of the Board upon the resignation or death of any member, or when a member ceases to be a voting resident of the City, or when a member fails to attend three (3) consecutive meetings, or fails to attend at least 75 percent of all meetings during the preceding twelve (12) month period. When a vacancy is declared, the Chair of the Board shall immediately so advise the Council in writing. The Board may recommend to the Council that the attendance provision be waived for cause, in which case no vacancy will then exist until the Council disapproves the recommendation.
- E. Any member can be removed by the City Council in accordance with the Caribou City Charter.
- F. Planning Board members are expected to be knowledgeable of laws, ordinances, regulations, and Board policies and to abide by them.

2. Organization and Rules.

- A. The voting members of the Board shall elect a Chair, a Secretary, or other officers as needed, from among its members by a majority vote and create and fill such other offices as it may determine at the annual organizational meeting which shall be held on the first regular Planning Board meeting in January, and the election shall follow immediately thereafter. The term of all offices shall be (1) year(s) with eligibility for reelection.

1. The Chair shall preside at all meetings and hearings of the Planning Board. The Chair has the authority to appoint all committees, to call all work sessions and to preside over executive sessions.
 2. The Recording Secretary shall be responsible for the minutes and records of the Board, shall keep a record of all resolutions, votes, transactions, correspondences, findings and conclusions of the Board and other duties as may be normally carried out by the secretary. All records shall be deemed public and may be inspected during normal business hours. Any member of the public may obtain a copy of the record from the Board upon payment of the cost of reproduction, and postage.
 3. The CEO shall be responsible for the agendas of regular meetings and special meetings with the Chair, distribution of the notice of the meetings and hearings, correspondence of the Board, and other duties as may be normally carried out by the secretary.
- B. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members, except the member who is being challenged.
 - C. The Board shall hold at least one regular meeting of the Board each month.
 - D. No meeting of the Board shall be held without a quorum consisting of four (4) members.
 - E. Planning Board business shall be conducted in accordance with the Maine Revised Statutes Annotated and/or local ordinances.
 - F. The Board shall adopt rules for transaction of business.
 - G. The Chair may call a special meeting of the Board.

3. Duties and Powers.

- A. The Board shall:
 1. Perform such duties and exercise such powers as are provided by ordinance/regulations and charter and the laws of the State of Maine, to include:
 - a. The responsibility for the directing and overseeing the activity of the comprehensive planning program;
 - b. Reviewing subdivision proposals;
 - c. Facilitating the interpretation of land use ordinances;
 - d. Administering and issuing permits pursuant to land use ordinances;
 - e. Projecting a course, through community planning, for the City's future;
 - f. Undertaking duties to conduct community planning activity;
 - g. Conducting a municipal planning program;
 - h. Seeing that all Planning Board members have an obligation to act reasonably and promptly; and
 - i. Facilitating in obtaining public participation, public relations, and citizen involvement.
 - B. The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

4. Meeting Organization.

A. Regular Meetings.

1. Regular meetings of the Planning Board will be scheduled during the Annual Meeting. The meeting shall be at the Caribou Municipal Building or other suitable meeting place. The Chair may schedule special meetings on 24 hours notice to the Planning Board members, City Manager, City Council Chair, CEO, and the media. If there is no business scheduled at least seven (7) calendar days before the meeting the Assistant City Manager, in consultation with the CEO, may cancel the meeting and shall inform the Planning Board, City Manager, and the media of such.
2. All meetings shall be open to the public.
3. No official business may be conducted without a quorum present. A quorum shall consist of four (4) members. It shall not include anyone who can not participate due to a conflict of interest. "*Conflict of interest*" means direct or indirect pecuniary interest, which shall include primary benefit to any member of the person's immediate family, their employer, or the employer of any member of the person's immediate family. It shall also include a situation where the Board member, by reason of their interest, is placed in a situation of temptation to serve their own personal interest, instead of the public's interest. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members present, except the member challenged.
4. In the event a quorum is not present, the Board members are authorized to request that the Chair reschedule the meeting to another date and adjourn the meeting. If the date is other than a regular meeting date the

Corresponding Secretary shall have the responsibility of providing adequate notice to the Board members, City officials, and the general public.

5. All comments addressed to the Board shall be made through the Chair.
6. All matters shall be decided by a roll call vote. A majority of the entire Board's voting members (3) is needed to pass a motion. When a motion results in a tie vote the Chair of the Board shall vote to break the tie.
7. All decisions must be based on whether the applicant has provided sufficient evidence to prove that all applicable law and ordinance requirements have been complied with.

B. Agendas.

1. Regular meeting agendas shall follow the following format:
 - a. Call to order and determine the presence of a quorum.
 - b. Public Hearing (if any is scheduled)
 - c. Minutes of the previous meeting and correspondence.
 - d. Old business.
 - e. New business.
 - f. Other.
 - g. Adjournment.
2. Agendas shall be posted in the City Office and mailed to the Board members at least seven (7) days before the meeting.
3. New applications shall be received at the City Office's, Planning and Code Enforcement Office, no later than ten (10) days to the meeting and shall be placed on the next available slot for new applications on the Board's agenda, and the applicant so notified of the date and time. At that initial meeting the Board shall make written findings whether the application is complete, and take all necessary steps to notify the applicant of the Board's decision.

C. Work Sessions.

1. The Chair may, with the approval of the majority of the Board, call work sessions for the purpose of updating the Comprehensive Plan, Subdivision Ordinance, Zoning Ordinances, Planning Board by-laws, and other information work items relating to the Board's Activities, providing that the public is notified. A quorum shall be present to conduct any business.
2. Work sessions are open to the public. The general public shall be barred from addressing the Board, unless a majority of the Board permits the public to speak.

D. Executive Sessions.

No other matters may be considered in that particular Executive Session.

1. Upon the vote of at least 3/5 of the Board members, present and voting, the Board may call for an Executive Session.
2. Within the Executive Session it shall be the Chair's responsibility to ensure that only that business for which the session was called will be discussed, and no official action will be taken.

5. Hearings.

- A. The Board, by majority vote at a regular or special meeting, may schedule a Public Hearing on an application within the time limits established by state law or local ordinance.
- B. The Board shall cause notice of the date, time, and place of such hearing, the location of the proposed building or lot, and the general nature of the question involved, to be given to the person making application and to be posted in three (3) prominent locations throughout the City at least seven (7) days prior to the hearing. The Board shall also cause notice of the hearing to be given to the City Council. The owners of the property abutting that property, or impacted upon, for which the application is taken shall be notified by mail at least seven (7) days prior to the date of the hearing.
- C. The Board shall provide, as a matter of policy for exclusion, irrelevant, immaterial, or unduly repetitious evidence.
- D. Order of Business at a Public Hearing.
 1. The Chair calls the hearing to order and determines whether there is a quorum.

2. The Chair then describes the purpose of the hearing, the nature of the case, and the general procedures to be followed.
3. The Board decides whether the applicant has sufficient right, title, or interest to appear before the Board.
4. The Board determines whether it has jurisdiction over the application.
5. The Board determines which individuals attending the hearing are "interested parties". "Interested Parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners, property owners directly impacted by the application, and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the hearing. The City Council and the CEO shall automatically be made parties to the proceeding. Interested parties will be required to state for the record their name, residence, business or professional affiliation, the nature of their interest in the hearing, and whether or not they represent another individual, firm, association, organization, partnership, trust, company, corporation, state agency, or other legal entity for the purpose of the hearing.
6. The Chair gives a statement of the case and incorporates into the record correspondences and reports filed with the Board prior to the hearing. This material shall be available for public inspection.
7. The applicant is given the opportunity to present their case without interruption.
8. The Board and the interested parties may ask questions of the applicant through the Chair.
9. The interested parties are given the opportunity to present their testimony, starting with proponents followed by opponents. The Board may call its own witnesses, such as the CEO.
10. The applicant may ask questions of the interested parties and Board witnesses directly.
11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
12. The Board shall receive comments and questions from all observers and interested citizens who wish to express their views.
13. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All interested parties shall be notified of the date, time, and place of the continued hearing, and the reasons for the continuance.
14. Upon such request made prior to or during the course of the hearing, the Chair may permit persons participating in any hearing pursuant to these by-laws to file written statements with the Board for inclusion in the record after the conclusion of the hearing, within such time and upon such notification to the other participants as the Chair may require.
15. Board members and its consultants have the right to prepare findings and conclusions at any public meeting prior to the decision being finalized. The Board may waive any of the above rules upon good cause shown. Any participant or other member of the public may obtain a copy of the record from the Board upon payment of the cost of transcription, reproduction, and postage.

6. Decisions.

- A. Decisions by the Board shall be made within the time limits established by state law and local ordinances and regulations.
- B. The final decision on any matter before the Board shall be issued as a written order signed by the Chair. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, and signed minutes of the meetings/hearing shall constitute the record. All decisions shall become a part of the record and shall include a specific statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law, or discretion presented and the appropriate order, relief or denial therefore. At a minimum, the record should specifically state that the applicant has/has not met all applicable state statutory requirements, all applicable City ordinances, and all applicable City regulations, and those legal documents shall be specifically referenced.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable statute, ordinance, or regulation as well as by community goals and policies as specified in a comprehensive plan, if any, and by the findings of the Board in each case.
- D. Notice of any decision, including the findings and conclusions/minutes, shall be sent by mail or hand delivered to the applicant, their representative or agent within fourteen (14) days of being rendered.
- E. Decisions of the Board shall be immediately filed in the office of the City Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

7. Appeals.

Appeal of the decision of the Planning Board shall be heard by the Board of Appeals.

Historical Note: Section 13-820 §1b, 1c, 2A(1), 2b, 2c, 2f as amended March 4, 2008; Section 13-820 4(A)(1) & Section 13-820 4(A)(3) as amended by City Council April 8, 2013.

Sec. 13-830 Board of Appeals.

1. Establishment and Administration.

The Board of Appeals is hereby established. The word "Board," when used in this Section, shall be construed to mean the Board of Appeals. The Board use shall consist of five (5) members of qualified persons with legal, certifications in zoning, or other applicable qualifications to hear administrative appeals. Appointment to the Board shall be by the City Council for an indefinite period of time providing the qualification of appointment remains. Board members may be removed by the City Council in accordance with the Caribou City Charter. The members of the Board shall receive a fee of \$25 per meeting or appeals plus mileage as set annually by the City Council for their services while under appointment. Absence of a member from three (3) consecutive meetings without written explanation shall be construed to be a resignation from the Board and shall require filling of the vacancy by action by the City Council. A vacancy shall be filled for the unexpired term only. Neither a municipal officer nor his/her spouse may be a member of the Board.

Historical Note: Section 13-830 as amended October 12, 2011.

Sec. 13-831 Board of Appeals Bylaws Provisions

1. Meetings

1. The regular meeting of the Board shall be held as necessary.
2. Special meetings of the Board may be called by the Caribou Code Enforcement Officer or City Manager. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board, the City Council, the Planning Board, City Manager and the Code Enforcement Officer.
3. The order of business at regular meetings of the Board shall be as follows: (a) roll call; (b) reading and approval of the minutes of the preceding meeting; (c) action on held cases; (d) public hearing (when scheduled); (e) other business; (f) adjournment.
4. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except as permitted by the Freedom of Information Act.
5. All meetings will be conducted under Robert's Rule.

2. Voting

1. A quorum shall consist of three (3) members of the Board.
2. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.
3. All matters shall be decided by a show of hands vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of those members present and voting, by in no case less than three (3) affirming votes.
4. A vote or by a lesser number than the required majority shall be considered a rejection of the application under consideration.
5. If a member has a conflict of interest, that member shall not be counted by the Board in establishing the quorum for the matter in which he or she has a conflict.

3. Reconsideration

1. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision **within 30 days** of its prior decision. The Board may conduct additional hearings and receive and review additional evidence and testimony.
2. Reconsideration should be for one of the following reasons:
 - a. The record contains significant factual errors due to fraud or mistake regarding facts upon which the decision was based; or
 - b. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

Historical Note: Section 13-831 was added February 11, 2008 and amended October 12, 2011.

Sec. 13-840 Schedule of Fees, Charges, and Expenses.

The City Council shall establish annually, on the advice of the Planning Board and CEO, a schedule of fees, charges, and expenses for matters pertaining to these Ordinances. The schedule of fees shall be posted in the City Office, and may be altered or amended after a public hearing by the City Council. Until all applicable fees, charges, and expenses have been paid in full by the applicant, no action shall be taken on any application or appeal.

Sec. 13-850 Amendments.

1. Initiation.

An amendment to these Ordinances may be initiated by:

- A. The Planning Board, by majority vote of the Board;
- B. City Council through a request to the Planning Board;
- C. An individual, through a request to the Planning Board; or,
- D. Written petition to the City Council of a number of voters equal to at least 10 percent of the number of votes cast in the City at the last gubernatorial election.

2. Procedure.

A. Any proposal for an amendment shall be made to the Planning Board in writing stating the specific changes requested. When a change in zoning boundaries is proposed, the application shall state the nature, extent, and location of the boundary change proposal, and shall be accompanied by a scale drawing showing the areas to be changed, with dimensions. When an amendment is proposed by other than the City Council or the Planning Board, a fee of ninety (\$90) dollars shall accompany the proposal to cover the costs of hearings and advertisements.

3. Adoption of Amendment.

- A. Within thirty (30) days of receiving an amendment, the Planning Board shall hold a public hearing on the proposed amendment, and unless the amendment has been submitted by the City Council or by a petition, the Board shall vote whether to forward the amendment to the City Council. The Board shall make a written recommendation regarding passage to the City Council prior to any action on the amendment by the City Council.
- B. The City Council shall hold a public hearing on the proposed amendment. Notice of the hearing shall be posted at three (3) prominent locations throughout the City at least seven (7) days prior to the hearing. The notice shall contain the time, date, and place of hearing, and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the City Clerk's office shall be adequate notice.
- C. An amendment to these Ordinances may be adopted after a public hearing by:
 1. A majority vote of the City Council if the proposed amendment is recommended by the Planning Board; or
 2. Two-thirds (2/3) majority vote of the City Council if the proposed amendment is not recommended by the Planning Board.

4. Repetitive Petitions.

No proposed change in these Ordinances which has been unfavorably acted upon by the City Council shall be considered on its merits again by the City Council within one (1) year after the date of such unfavorable action, unless adoption of the proposed change is recommended by unanimous vote of the Planning Board.

Historical Note: Section 13-850 §2A as amended April 24, 2006.

Sec. 13-900 Definitions.

1. Construction of Language.

The following definitions shall apply to the Zoning Ordinance and the Subdivision Ordinance of the City of Caribou. In the interpretation and enforcement of these Ordinances, all words other than those specifically defined in the Ordinance shall have the meaning implied by their context in the Ordinance, their ordinarily accepted meaning, or as defined herein. In the case of any difference of meaning or implication between the text of the Ordinance, illustration, or table, the text shall control.

- A. The word "person" includes firm, association, organization, partnership, trust, company, or corporation, as well as an individual or any other legal entity.

- B. The present tense includes the future tense, the singular number includes the plural, and the plural numbers includes the singular.
- C. The word "shall" is mandatory, the word "may" is permissive.
- D. The word "lot" includes the words "plot" and "parcel".
- E. The words "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- F. The word "City" shall mean the City of Caribou, Maine.
- G. The word "CEO" shall mean Code Enforcement Officer.
- H. The term "Zoning Ordinance" shall mean the Zoning Ordinance of the City of Caribou.
- I. The term "Subdivision Ordinance" shall mean the Subdivision Ordinance of the City of Caribou.

2. Definitions.

Abandoned: The stopping of an activity, use, business, in addition to: actions taken by an owner or representative that removes the major portion of materials, goods, equipment, facilities, or parts thereof necessary for the operation of the activity, use, business. Also contains the element of abandoned and/or change to a less intensive use of the property/structure.

Abutter: Any person, to include property owner, leasee, or tenant, whose property adjoins or is directly across the road, street, right-of-way, stream, or waterway from the lot under consideration. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration or a party whom the Planning Board determines would be impacted by the proposal.

Accessory Use or Structure: A use or structure which is customarily and in fact both incidental and subordinate to the principal use of the structure. The term "incidental" in reference to the principal use or structure shall mean subordinate and minor in significance to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. In shoreland areas, a deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Agent: Any person having written authorization to act in behalf of a property owner, signed by the property owner.

Aggrieved Party: Any person whose property is directly or indirectly affected by the granting or denial of a permit or variance under an ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture: The production, keeping, or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does include animal husbandry, and the processing of goods carried out pursuant to a home food manufacturing license from the Maine Department of Agriculture, but does not include forest management and timber harvesting activities. As an accessory use to the principal use of the lot for agriculture, the sale of: produce and products actually grown, raised or processed on the premises; or fresh produce purchased off-site to supplement sales during the growing season, and agriculturally related products, provided that such produce and products do not occupy more than 25 percent of the space devoted to retail sales.

For the purpose of this definition, "agriculturally related products" means items produced under a home food manufacturing license from the Maine Department of Agriculture, such as jams and jellies, honey, cheese and dairy products, homemade baked goods, herbs and spices, ice cream, and maple syrup. The allowed retail sales may be in farm stand or stands in which a total of no more than five hundred (500) square feet are occupied by the sales activity.

For the purpose of this definition, the keeping of horses and horticulture, are considered to be uses separate from agriculture.

Agricultural Products, Processing, and Storage: Establishments engaged in the manufacturing, processing, and/or packaging of foods, dairy products, commercial composting, and storage of such products.

Agricultural Sales and Service: The use of buildings or land for the sale of equipment or products or services to those engaged in agriculture.