**Article 15** — To see if the Voters will adopt an Ordinance to Amend the Topsham Zoning Ordinance to Amend Chapter 225-70, Board of Appeals which aligns the Board of Appeals review procedures with State Statute.

Underlined text are additions; Struck out text is proposed to be removed

Chapter 225. Zoning

**Article X. Board of Appeals**

§ 225-70. Powers and duties.

The Board of Appeals shall have the following powers:

**A.** Administrative review. To hear and decide appeals where it is alleged there is a zoning violation or error in any order, requirement, decision or determination made by the Code Enforcement Officer in the enforcement of this chapter.

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 on a conditional use application or Historic District Commission; 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 ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is advisory only and not appealable to the Board of Appeals.

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.

When the Board of Appeals hears a decision of the Planning Board or Historic District Commission, it shall hold an appellate hearing, and may reverse the decision of the Planning Board or Historic District Commission only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board or Historic District Commission. The Board of Appeals may only review the record of the proceedings before the Planning Board or Historic District Commission. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board or Historic District Commission, 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 or Historic District Commission proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board or Historic District Commission for additional fact finding.

**B.** Variances. To authorize variances upon appeal in specific cases, but only within the limitations set forth in this chapter.

**C.** Interpretations of this chapter.
D. To hear and decide appeals for conditional uses.

D. The Board of Appeals shall not have jurisdiction or authority to hear appeals from site plan or subdivision decisions made by either the Planning Board or the Town Planner.

§ 225-71. Variances
Variances and administrative exception may be permitted only under the following conditions:
A. Variances may be granted by the Board of Appeals for land use, setbacks, height, minimum lot size, structure size, and open space requirements dimensional standards such as lot area, lot coverage, frontage and setback requirements as allowed by MRSA 30-A §4353.

§ 225-72. Appeals
A. Making an appeal.
(1) An appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer, the Historic District Commission, or the Planning Board on a conditional use application.

C. Hearings.
(1) In a de novo hearing on an appeal of a decision by the Code Enforcement Officer, the Board 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 his 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.

(2) In an appellate hearing on an appeal of a Planning Board decision on a conditional use application or a decision of the Historic District Commission, the Board may receive oral arguments, but may only review the record of the proceedings before the Planning Board or Historic District Commission.

(3) 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 Chairman.

(4) At any hearing, a party may be represented by agent or attorney. Hearing shall not be continued to other times except for good cause.

(5) If a party does not attend a hearing and is not otherwise represented, its case will be deemed to have been withdrawn without prejudice to refile the appeal. The filing fee of $50 will not be refunded to any applicant whose appeal is withdrawn in this manner.

(6) The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs or other material he deems appropriate for an understanding of the appeal.
(67) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

-§ 225-73 Decisions
E. A conditional use permit, or variance or administrative exception secured under the provisions of this chapter by vote of the Board of Appeals or Planning Board shall expire if the work or change involved is not completed within two years of the date on which the conditional use or variance or administrative exception is authorized.