

**Board of Adjustment  
Town NEW HAMPTON  
BY-LAWS  
AMENDED 6/5/19**

**AUTHORITY**

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance and Map of the Town of New Hampton.

**OFFICERS**

1. A Chairperson shall be elected annually by a majority vote of the board in the month of May. The Chairperson shall preside over all meetings and hearings, appoint such committees as directed by the board and shall affix his/her signature in the name of the board.
2. A Vice-Chairperson shall be elected annually by a majority vote of the board in the month of May. The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters, which come before the board during the absence of the Chairperson.
3. A Clerk shall be elected annually by a majority vote of the board in the month of May. The clerk shall maintain a record of all meetings, transactions and decisions of the board, and perform such other duties as the board may direct by resolution. The elected clerk may delegate his/her administrative duties to a designee.
4. All officers shall serve for one year and shall be eligible for re-election.

**MEMBERS AND ALTERNATES**

1. Up to two alternate members shall be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board and to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.
2. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chairperson to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other board members, the applicant, abutters and the public, through the Chairperson of the meeting. Alternates shall not be allowed to make or second motions. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.
3. All members and alternates shall, within one year of their appointment, attend training in New Hampshire Land use law and Zoning Board Rules and Procedures. The Town of New Hampton shall reimburse any expenses directly attributable to the training.

4. Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chairperson, thru the Office of the Selectmen as soon as possible. Members, including the Chairperson and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration. Any member missing more than (3) consecutive meetings without an approved leave of absence from the Chairperson will be considered a resignation.

## MEETINGS

1. Meetings, as required, shall be held at the Town Office Building at 7:00 PM on the first Wednesday of each month. Other meetings may be held on the call of the Chairperson provided public notice and notice to each member is given in accordance with RSA 91-A:2 II (24 Hours)
2. Quorum. A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
3. The Chairperson shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal/application.
4. If any regular board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chairperson shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the board while so sitting.
5. Alternates shall be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the Chairperson shall appoint the alternate who has served the longest. If two or more alternates meet this criterion, the selection shall be at the discretion of the Chairperson.
6. If there are less than five members (including alternates) present, the Chairperson shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present that shall not solely constitute grounds for a rehearing should the application fail.
7. Disqualification. If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he shall notify the Chairperson as soon as possible so that an alternate may be requested to sit in his place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the board may request the board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.
8. Either the Chairperson or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself/ herself from the board table during the public hearing and during all deliberation on the case. *(Note: The disqualified member does not lose their right as a citizen to speak before the Board.)*

## Order of Business

The order of business for regular meetings shall be as follows:

- Call to order by the Chairperson.
- Roll call.
- Public Hearing.
- Summary of Facts.
- Deliberation, Findings and Conditions (if any).
- Unfinished business.
- New business.
- Minutes from previous meeting(s).
- Communications and miscellaneous.
- Other business.
- Adjournment.

## APPLICATION/DECISION

### 1) Applications:

- a. Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the clerk of the board of adjustment or designee, 14 days prior to the next scheduled meeting, who shall record the date of receipt over his or her signature.
- b. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.
- c. The Board shall reject all applications it determines are not properly completed. All other applications shall be scheduled for a public hearing to be conducted within within the timeframes prescribed by RSA 676:7, II, or on the 1<sup>st</sup> Wednesday of the month, as long as the applicant(s) is agreeable.
- d. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.

### 2) Public Notice:

- a. Public notice of public hearings on each application shall be placed in a newspaper of general circulation in the area and shall be posted at the Town Office and one other location, not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made, and the date, time and place of the hearing.
- b. Personal notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the planning board, town clerk and other parties deemed by the board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
- c. The applicant shall pay for all required notice costs in advance.

### 3) Public Hearing.

- a. The conduct of public hearings shall be governed by the following rules:
  - i. The Chairperson shall call the hearing in session and ask for the clerk's report on the first case.

- ii. The clerk shall read the application and report on how public notice and personal notice were given.
  - iii. Members of the board may ask questions at any point during testimony.
  - iv. Each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
  - v. Any member of the board, through the Chairperson, may request any party to the case to speak a second time.
  - vii. Any party to the case who wants to ask a question of another party to the case must do so through the Chairperson.
    - a. The applicant shall be called to present his appeal.
    - b. Those appearing in favor of the appeal shall be allowed to speak.
    - c. Those in opposition to the appeal shall be allowed to speak.
    - d. The applicant and those in favor shall be allowed to speak in rebuttal.
    - e. Those in opposition to the appeal shall be allowed to speak in rebuttal.
    - f. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the Chairperson not later than 3 days prior to the public hearing.
    - g. The board of adjustment will hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance and state zoning law.
    - h. The Chairperson or his designee shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.
    - i. The hearing on the appeal shall be declared closed and the Board shall proceed to deliberation of the appeal.
    - j. The Zoning Board of Adjustment shall review and discuss each criteria. The call for a motion on whether to grant or deny an application shall take place after ALL criteria has been deliberated on, as opposed to voting on whether the application meets each of the criteria, separately.
    - k. Deliberation of an appeal shall take place in an open meeting but shall be closed to public input unless clarification of previously presented testimony is required and is requested by the Chairperson. If further information is needed, prior to reopening the public hearing, the Chairperson shall determine if any person(s) were present and/or provided testimony may have left the meeting and if this is the case, the Chairperson shall suspend deliberation, ask the Board to continue the meeting and re-notify abutters.
- 4) Decisions. The Board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. Notice of the decision will be made available for public inspection within 5 business days, as required by RSA 676:3 and will be sent to the applicant by certified mail. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the planning board, the board of selectmen, town clerk, property tax assessor and other town officials as determined by the board.
- 5) Voting. The Chairperson may assign the task of drafting a motion to a board member for the deliberative portion of the meeting for the consideration of the board. Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The board must put forth a new motion to affirmatively set forth a decision.
- 6) Reconsideration by the Board. The board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision. Motions for Rehearing can only be received in the Selectmen's Office during normal business hours.
- 7) Motions for Rehearing. If the board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing

shall follow the procedures set forth in RSA 676:7.

## **RECORDS**

- 1) The records of the board shall be kept by the Board clerk and made available for public inspection at the Town Offices in accordance with RSA 673:17
- 2) Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made.
- 3) Minutes of all meetings including names of board members, persons appearing before the board, and a brief description of the subject matter shall be open to public inspection within 5 business days of the public meeting.

## **AMENDMENTS**

- 1) Rules of procedure shall be adopted or amended by a majority vote at a regular meeting of the board provided that such new rules or amendments are proposed and discussed at a prior meeting at which the vote is to be taken and shall be placed on file with the town clerk and be available for public inspection pursuant to RSA 676:1.

## **WAIVERS**

- 1) Any portion of these rules of procedure may be waived in such cases where, in the opinion of the board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

## **JOINT MEETINGS AND HEARINGS**

- 1) RSA 676:2 provides that the board of adjustment may hold joint meetings or hearings with other "land use boards," including the planning board, the historic district commission, the building code board of appeals, and the inspector of buildings, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
- 3) Joint business meetings with any other land use board may be held at any time when called jointly by the Chairperson of the two boards.
- 4) A public hearing on any appeal to the board of adjustment will be held jointly with another board only under the following conditions:
  - a. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
  - b. If the other board is the planning board, RSA 676:2 requires that the planning board Chairperson shall chair the joint hearing. If the other board is not the planning board, then the board of adjustment Chairperson shall chair the joint hearing; and
  - c. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and
  - d. The other board shall concur in these conditions.