

Town of Winchester, NH
Zoning Board of Adjustment
Rules of Procedure

AUTHORITY:

1. These Rules of Procedure are adopted under the authority of New Hampshire Planning and Land Use Regulations, RSA 676:1. The Zoning Board of Adjustment (ZBA) rules on requests for variances, special exceptions, equitable waivers from dimensional requirements, decides appeals from administrative decisions that include the State Fire Code and Building Code and request of rehearing.

OFFICERS & PERSONEL:

1. A Chairperson shall be elected annually by a majority vote of the Board at the first meeting following the annual town elections. The Chairperson shall preside over all meetings and hearings, and shall sign in the name of the Board.
2. A Vice Chairperson shall be elected annually by a majority vote of the board at the first meeting following the annual town elections. The Vice Chairperson shall preside in the absence of the Chairperson and shall have full powers of the Chairperson on matters which come before the board during the absence of the Chairperson. If both the Chairperson and Vice Chairperson are unable to serve because of absence or disqualification, the remaining board members shall choose a member to fill the Chairperson position until they can resume their duties.
3. A Clerk may be elected annually by a majority vote for coverage of any board meeting when the town does not designate an employee such as an administrator, planner, or assistant or other person. This person shall maintain the record of all meetings, transactions and decisions of the board and perform other duties as the Board may direct.
4. All Officers shall serve for one year and shall be eligible for re-election.

MEMBERS & ALTERNATES:

1. Up to five regular members and three alternate members shall be appointed to a three year term, as appointed by the Selectboard.
2. 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 as soon as possible. All active members, including officers, shall participate in the decision making process and vote to approve or disapprove all motions under consideration.
3. Alternates should attend all meetings to familiarize themselves with the procedures and applications before the Board to stand ready to serve whenever a regular member of the Board is unable to fulfill their responsibility. Non-active alternates may participate during public

hearings as a non-voting member pursuant to RSA 673:6 and review documentation and ask questions similar to members of the public, but will be recognized as a non-active alternate so the public and applicant are aware of their position. However they shall not participate in any way during the deliberations or voting by the board.

MEETINGS:

1. The Board generally meets the second Thursday of the month on the Main Floor of the Town hall at 7pm and ending no later than 10pm. Other meetings may be called by the Chairperson or in his/her absence, Vice Chairperson or at the request of three members of the board provided public notice and notice to all members is given.
2. A quorum for all meetings of the Board shall be three members, including active alternates.
3. 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 should not solely constitute grounds for a rehearing should the application fail.
4. Members are expected to vote on matters before the Board. Abstaining from a vote is discouraged. If a member is abstaining from a vote a brief reason is expected to be announced. A request to reconsider a previous vote shall be in order only if made by a member within 30 days of a decision.
5. A tie vote shall be deemed to defeat the question. If a motion fails, the board must put forth a new motion to affirmatively set forth a decision.
6. If any member finds it necessary to disqualify themselves from sitting on a particular case, as provided in RSA 673:14, they should notify the Chairperson as soon as possible so that an alternate may be requested to sit in their 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 begins. The vote shall be advisory and non-binding. Either the Chairperson or the disqualified member shall announce the disqualification. This member shall absent themselves from the board table during the public hearing and during all deliberations.
7. If a member of the Board missed a meeting or hearing, that member can be qualified to act on the issue before the board if that member has reviewed the application, previous minutes and any other relative information regarding the issue.

8. General order of business:
 - a. Call to order by the Chairman and roll call.
 - b. Minutes of the previous meeting
 - c. Public Hearings
 - d. Non Public session per RSA 91A:3(II), if necessary
 - e. Old or new business
 - f. Adjournment

APPLICATIONS:

1. Before an application is reviewed and scheduled for a hearing a minimum fee of \$150 must be submitted payable to the Town of Winchester. The first \$75 is a non-refundable amount to offset the administrative costs of processing the application. The remaining amount is applied to the costs of processing the application, mailing costs, advertisements, etc.
2. Each application for a hearing before the Board shall be made on forms provided by the board and shall be submitted to the Land Use Office with the application fee. These documents shall be deemed received when an authorized town employee receives and date stamps the document. Applications are only received during regular business hours.
3. Appeals from an administrative decision, under RSA 676:5 shall be filed within thirty days of the decision. The appeal shall be filed on official forms provided by the board and submitted to the Land Use Office with the application fee and shall be date stamped.
4. The ZBA at its next scheduled meeting will review all completed applications received at least ten days prior to the meeting. The ZBA generally reviews the application at one meeting and if the application is accepted schedules a hearing for the following meeting.
5. Upon receipt of an application for development, the board shall determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact in accordance with RSA 36:54.

PUBLIC NOTICE:

1. Public notice of a public hearing on each application shall be done in accordance with RSA 676:7. This notice shall include a notice in the Keene Sentinel and at least two other public places such as; the town hall, town web site, or the Post Office not less than five days before the date of the hearing. The notice shall include the name of the applicant, description of the property including

the tax map ID number, action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made and the date, time and place of hearing.

2. Personal notices shall be made by certified mail to the applicant, abutters and any professional names on the plan not less than five days before the hearing. Notices may also be given to department heads and other boards

PUBLIC HEARINGS:

1. The conduct of a public hearing shall be governed by the following;
 - a. The Chairperson shall call the hearing into session.
 - b. The application shall be read, a report on the notices given, and there will be a brief summary on the proposal.
 - c. Members of the Board may ask questions at any time during testimony.
 - d. The applicant will present their proposal.
 - e. Each person who appears shall be required to state their name and address and indicate whether they are party to the case or as an agent (with authorization letter) or counsel to a party of the case. All questions are directed through the Chairperson.
 - f. The applicant and those in favor shall be allowed an rebuttal
 - g. Those in opposition shall be allowed a rebuttal.
 - h. The Board shall 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.
 - i. All written correspondence shall be entered into the record.
 - j. Other boards or departments comments will be read or heard.
 - k. The Board will decide whether to close the hearing or continue the hearing if additional information is needed. Additional notice would not be required for a continuation if the date, time and location are announced at this time. The board may or may not render a decision immediately following the close of the hearing. Deliberations will be conducted at the following meeting.

DECISIONS:

1. The Board typically decides all cases within thirty days of the close of a public hearing and shall approve, approve with conditions, or deny the application. Notice of the decision shall be made

available for public inspection within five business days, as required by RSA 676:3 and will be sent to the applicant. If the appeal is denied the decision shall include the reasons therefore.

2. The Chairperson may assign the task of drafting a motion to a board member who shall bring a draft motion to the Board at the deliberative session for the consideration by the Board. Should a motion result in a tie vote or not received the necessary three votes for a motion to pass, the board shall put forth a new motion to affirmatively set forth a decision.
3. If the Board grants a motion for a rehearing, the new public hearing shall be held at the earliest convenience of the Board taking into account the wishes of the petitioner and the best interest of the applicant, abutters and the public at large.

RECORDS:

1. The records of the Board shall be kept in the Land Use Office and made available for public inspection in the Winchester Town Hall in accordance with RSA 91-A:4.
2. Final written decisions will be placed on file and available for public inspection within five business days after a decision is made per RSA 676:3.
3. Draft 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 five business days of a meeting or public hearing per RSA 91-A2,II. Final approved minutes are on file with the Town Clerk and the Land Use Office.
4. The Board generally tape records all meetings and can dispose of the tape once the minutes are approved. Tape recordings are not considered official documents of the meeting, only approved minutes are.

JOINT HEARINGS:

1. RSA 676:2 provides that the board may hold joint meetings or hearings with other Land Use Boards, including the Planning Board, Historic District Commission, Building Inspector, and that each board shall have discretion as to whether or not to hold a joint meeting with any other Land Use Board.
2. A joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
3. 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 Chairperson of the ZBA shall chair the joint hearing; and
4. 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

5. The other board shall concur on these conditions.

SITE VISITS:

1. A site visit is defined as a visit by the Board, a board member or the Board's representative to a location which is the subject of an application before the Board, where the visit is in the company of the owner applicant, their agents and involves going onto the property.
2. When a site visit is deemed necessary for the adequate consideration of an application, the Board shall request the applicant to allow a site visit by the board. The visit shall be posted and conducted as a regular meeting, and minutes shall be taken if there is a quorum of members.
3. If the Board's designee or individual board member is the sole visitor, this person shall report findings to the Board at the next meeting in regards to the application.
4. The practice of an applicant directly contacting a member to invite that member to visit a property without prior approval from the Board shall be discouraged as an inappropriate course of conduct.
5. The Board shall refrain from making decisions on an application while on a site visit. Any comments, motions, or directives to an applicant or interested parties should be made at the subsequent public hearing.

STANDARDS OF CONDUCT:

1. The ZBA acts in one capacity; Quasi judicial. Quasi judicial is when the Board conducts public hearings on applications to hear evidence for and against an issue and render a fair, lawful and equitable decision.
2. A Board member shall not disclose or improperly use confidential information obtained in the course of his or her duties for financial gains or to further a personal interest.
3. A Board member who has an interest in an application before the board may, following recusing themselves from the Board, exercise his or her rights as a citizen and address the board on the issue under review.
4. Ex parte communications, whether verbal or written, impairs the procedural due process rights of interested parties and undermines the public confidence in the ZBA. Members receiving ex parte communications should refrain from responding and direct the person(s) to the next board meeting.
5. All members are highly encouraged to disclose to the board any current or past connection, friendship, business relationship, or similar acts with any applicant as soon as reasonably possible. This avoids the appearance of any impropriety and can be discussed by the Board to

see if there is any reason for recusal. The decision of recusal resides with the individual member. This discussion becomes part of the record.

REMOVAL OF MEMBERS:

1. Appointed or elected members may be removed by the Board of Selectmen after a public hearing upon written findings of inefficiency, neglect of duty or malfeasance in office per RSA 673:13.
 - a. Any member who has missed three or more meeting in a one year timeframe, not due to illness, injury, family emergency or other reasons accepted by the board shall be considered neglecting their duty of office and shall be reported to the Board of Selectmen for a request of removal from office. All absences shall be reported in a timely manner.

AMENDMENTS:

1. The Board's Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the board provided that such changes are proposed and discussed or read at least two meetings prior to the meeting at which the vote is taken, 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.

Procedures adopted:

Amended 3/4/10, 10/24/13