

Board of Adjustment

Town of Newington

Rules of Procedure

I. Authority

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and the zoning ordinance of the Town of Newington.

II. Officers

1. A chairperson shall be elected annually by a majority vote of the Board of Adjustment ("Board") at the first Board meeting following the Annual Town Meeting.. The chair shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix their signature in the name of the Board.
2. A vice-chairperson shall be elected annually by a majority vote of the Board at the first Board meeting following the Annual Town Meeting.. The vice-chairperson shall preside in the absence of the chair and shall have the full powers of the chair on matters which come before the Board during the absence of the chair.
3. A clerk shall be elected annually by a majority vote of the Board in the month of at the first Board meeting following the Annual Town Meeting.. 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.
4. All officers shall serve for one year and shall be eligible for re-election.

III. Members and Alternates

1. Up to five alternate members may be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve whenever a regular member of the Board is unable to fulfill their 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 chair 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. Alternates shall not be allowed to make or second motions. Once the Board moves into deliberations, alternates shall no longer participate with the Board. 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 chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

3. Board 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 chair as soon as possible. Members, including the chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

IV. Meetings

1. Meetings may be held at the call of the chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.
2. Quorum: A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members.
 - a. The chair shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.
 - b. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the chair 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.
 - c. If there are less than five members (including alternates) present, the chair shall give the option to proceed or not to proceed 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.
 - d. If the applicant opts to postpone due to less than a full Board present, the Board shall announce the time, date, and location of the continued hearing. If the Board cannot determine the time, date, and location of the continued hearing, the Board shall provide new notice to all parties pursuant to RSA 676:7.
3. Disqualification: If any member finds it necessary to disqualify themselves from sitting in a particular case, as provided in RSA 673:14, the member shall notify the chair as soon as possible so that an alternate may be requested to sit in the member's 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 nonbinding.

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should recuse themselves, Board members should review the questions which are asked of potential jurors to determine qualification (RSA 500-A:12). A potential juror may be asked whether they:

- a. Expect to gain or lose upon the disposition of the case;
- b. Is related to either party;
- c. Has advised or assisted either party;
- d. Has directly or indirectly given an opinion or formed an opinion;
- e. Is employed by or employs any party in the case;
- f. Is prejudiced to any degree regarding the case; or
- g. Employs any of the counsel appearing in the case in any action then pending in court or in town.

Either the chair or the member disqualifying themselves before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent themselves from the Board table during the public hearing and during all deliberation on the case.

4. Order of Business

The order of business for public meetings and hearings shall be as follows; however, the Board may vote to take items out of order:

- a. Call to order by the chair.
- b. Roll call by the chair.
- c. Public hearing.
- d. Old business.
- e. New business.
- f. Communications and miscellaneous.
- g. Other business.
- h. Minutes of previous meeting.
- i. Adjournment.

V. 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 Newington Town Planner who shall record the date of receipt.
Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the Board. At each meeting, the clerk or Town Planner shall present to the Board all

applications that were received by the Town at least 7 days before the date of the meeting.

2. Forms: All forms prescribed herein and revisions thereof shall be adopted by resolution of the Board and shall become part of these rules of procedure.

3. Public Notice

- a. Public notice of public hearings on each application shall be given in the manner prescribed in RSA 676:7.
- b. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal and shall also be given to abutters and other parties legally required.
- c. The applicant shall pay for all required notice costs in advance.

4. Public Hearing

A public hearing on an application shall be held within 45 days of the receipt of the application, unless the applicant requests or otherwise consents in writing to an extension.

The conduct of public hearings shall be generally governed by the following rules:

- a. The chair shall call the hearing in session and ask for the clerk's report on the first case.
- b. The chair shall read the application and report on how public notice and personal notice were given.
- c. Any Board member may at any time request of the Chair the right to make inquiry of the applicant, the applicant's representative, or any other persons speaking to the matter.
- d. Abutter(s) and other persons whom the Board deems appropriate may be recognized to speak by the Chair at the public hearing and/or may testify in person at the public hearing.
- e. Persons requesting to speak shall direct all comments to the Chair.
- f. All speakers shall state their name and address in the case for the record.
- g. The Chair may refer comments or questions to any other Board member for response.
- h. Applicant/designee shall present their case.

- i. Those in favor speak.
 - j. Those opposed speak.
 - k. Applicant/designee may rebut opposition testimony.
 - l. Those opposed may rebut any new rebuttal testimony.
 - m. The Board will hear any evidence that pertains to the facts of the case or how the facts relate to the provisions of the ordinance and state zoning law.
 - n. If there are no further questions, the chair shall close the public hearing on that docketed item and the Board shall then deliberate.
5. Deliberations and Motions: Upon the close of the public hearing, the Board shall deliberate and discuss the application; all sitting Board members should actively participate in the deliberations.
6. Motions and Voting: When a motion on the disposition of a case is made and seconded, it shall be stated by the Chair before debate. A motion may not be withdrawn or amended by the mover without the consent of the second and approval of a majority of the Board. Determinations on any motion shall require the concurrence of a majority of the members present and voting. 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. If the Board is unable to reach a decision, it shall continue the matter to a date, time and place certain for further consideration.
7. Decisions:
- a. The Board shall decide all cases within 90 days of receipt of application by approving, approving with conditions, or denying the application, provided that the applicant may waive this requirement and consent to an extension as may be mutually agreeable. If the Board determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the Board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.
 - b. The minutes of the meeting at which a vote on the application is taken, including a written decision containing the reasons supporting the vote and all conditions of approval, shall be placed on file in the Board's/Town Planner's office and shall be made available for public inspection within 5 business days of such vote, as required by RSA 676:3. A copy of the written decision shall be mailed or otherwise made available to the applicant within 5 business days of the vote. The

decision shall include specific written findings of fact that support the decision. Failure of the Board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. The notice shall also be given to all parties legally required.

8. Reconsideration by the Board / Motions for Rehearing: 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 as per *74 Cox Street, LLC v. City of Nashua*, 156 N.H. 228 (2007). Motions for Rehearing can only be received in the office of the Board during normal business hours. *See Cardinal Development v. Winchester*, 157 NH 710 (2008).
9. Rehearing Procedures: 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.

VI. Records

1. The records of the Board shall be kept by the Planning Office and made available for public inspection at the Town Offices, 205 Nimble Hill Rd., Newington, N.H., in accordance with RSA 673:17.
2. Final written decisions will be placed on file with the Town Planner 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. Approved minutes must also be posted on the website in a consistent and reasonably accessible location, or a notice must be posted and maintained on the website stating where minutes may be reviewed and copies requested. RSA 91-A:2, II.

VII. Amendments

These rules of procedure may be amended, or new rules adopted, by a majority vote at a regular meeting of the Board, following two readings at a public session, provided that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the town and be available for public inspection pursuant to RSA 676:1.

VIII. Waivers

Any portion of these rules of procedure may be waived, where permitted by law, upon a majority vote of the Board.

IX. 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, 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.
2. Joint business meetings with any other land use board may be held at any time when called jointly by the chair of the two boards.
3. 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 regarding the same subject matter; and
 - b. If the other board is the planning board, RSA 676:2 requires that the planning board chair shall chair the joint hearing. If the other board is not the planning board, then the board of adjustment chair 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.

These Amended Rules of Procedure were read at public meetings on 8/17/23 and on 10/19/23 and adopted by the Board of Adjustment at their meeting held 10/19/23.

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