

TOWN OF NEW BOSTON
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE

Adopted

February 18, 2003

Amended

July 19, 2016

Amended

May 16, 2023

Section	Title
Section 1	Authority
Section 2	Board Members and Alternate Members Members Alternates Vacancies in Membership
Section 3	Officers
Section 4	Meetings
Section 5	Removal of Members Resignations - Removal Disqualification of Member - Recusal
Section 6	Application/Decision Process Applications Withdrawal/Request to Reschedule Public Notice Public Hearings Deliberations Decisions Voting Motion for Rehearing
Section 7	Records
Section 8	Amendments
Section 9	Waivers
Section 10	Joint Meetings and Hearings
Section 11	Severability
Section 12	Standing Order

Section 1 Authority

1.1 These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA), 1983, Chapter 676:1, and the Zoning Ordinance and Map of the Town of New Boston, New Hampshire.

Section 2 Board Members and Alternate Members

Members

2.1 Members shall be appointed in accordance with RSA 673:3, as amended.

2.2 Members and Alternate Members (hereinafter Alternates) must reside in the Town of New Boston 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.

Alternates

2.3 Up to five alternate members shall be appointed by the Board of Selectmen for staggered three year terms. Alternates 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 his/her responsibilities.

2.4 At meetings of the Board, 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 who are not activated 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 Chair shall fully inform the public of the status of any alternate

present and identify the members who shall be voting on the application.

Vacancies in Membership

- 2.5 In the event of a vacancy (vacant position on the Board), other than through expiration of a term of office, the Board of Selectmen shall appoint a replacement.
- 2.6 The Chair may designate an alternate member of the Board to fill a vacancy temporarily until the Board of Selectmen are able to fill the vacancy.
- 2.7 I. After public hearing, appointed members and alternate members of an appointed local land use board may be removed by the appointing authority upon written findings of inefficiency, neglect of duty, or malfeasance in office.
- II. The board of selectmen may, for any cause enumerated in paragraph I, remove an elected member or alternate member after a public hearing.
- III. The appointing authority or the planning board shall file with the city or town clerk, the village district clerk, or the clerk for the county commissioners, whichever is appropriate, a written statement of reasons for removal under this section.
- IV. The council, selectmen, county commissioners with the approval of the county delegation, or district commissioners may for any cause enumerated in this section remove the members selected by them. See RSA 673:13 Removal of Members.

Section 3 Officers

- 3.1 The Board shall elect officers annually by a majority vote of the Board in the month of March. Officers shall be regular members of the Board and may include a Chair, a Vice-Chair and a Clerk.
- 3.2 A **Chair** 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.
- 3.3 A **Vice-Chair** 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.

- 3.4 A **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 Clerk may be an appointed Board member or a non-Board member.
- 3.5 All officers shall serve for one year and shall be eligible for re-election.

Section 4 Meetings

- 4.1 Regular meetings shall be held at the Town Hall Conference Room, at 7:00 p.m. on the third Tuesday of each month. Other meetings may be held on call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2,II, as amended.
- 4.2 Quorum. A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members.

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.

If there are fewer than five members (including alternates) present, the Chair 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.

- 4.3 Disqualification. If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, as amended, he shall notify the Chair 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 votes shall be advisory and non-binding.

The disqualification shall be announced by either the Chair or the member disqualifying himself before the beginning of the public hearing on the case. The disqualified member shall absent himself from the Board table during the public hearing and during all deliberation on the case.

4.4 Order of Business. The order of business for regular meetings shall be as follows:

- a. Call to order by Chair;
- b. Roll call by Clerk;
- c. Minutes of previous meeting;
- d. Public hearing(s);
- e. Unfinished business;
- f. New business;
- g. Communication and miscellaneous;
- h. Other business;
- i. Adjournment.

The Chair may deviate from this order of business if he or she determines it is appropriate to do so.

Section 5 Removal of Members

5.1 Resignations-Removal.

a. Any member of a Board, Committee or Commission shall submit his or her resignation to the Chair of their Board, Committee or Commission. The Board, Committee or Commission shall forward the notice of resignation along with their recommendation for action to the Board of Selectmen.

b. Any Board, Committee or Commission member who fails to attend three consecutive meetings or five meetings within the annual period of April 1st through March 31st, without being excused by the Chair of the Board, Committee or Commission, shall be deemed to have resigned and an automatic vacancy will be declared. Persons who believe that they have acceptable reasons for reinstatement may request reconsideration by the Board of Selectmen.

5.2 Disqualification of Member - Recusal.

a. No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, historic district commission, agricultural commission, or housing commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial

capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties. See RSA 673:14.

b. When uncertainty arises as to the application of paragraph a to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

c. If a member is disqualified or unable to act in any particular case pending before the board, the chairperson shall designate an alternate to act in the member's place, as provided in RSA 673:11.

Source. 1983, 447:1. 1988, 26:1. 1992, 64:9. 1996, 42:11. 2007, 266:6. 2008, 391:6, eff. Sept. 15, 2008.

Section 6 Applications/Decision Process

6.1 Applications.

- a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be submitted to the Clerk of the Board of Adjustment, who shall record the date of receipt over his/her signature.
- b. If the Clerk does not have an office in the Town Hall, applications may be delivered to the Planning Department during normal business hours, after the applicant has contacted the Clerk to inform him or her that said application will be submitted.
- c. Applications for the agenda of the next regular meeting of the Board shall be closed at 4:00 p.m. on the date set as the filing deadline before the scheduled meeting date. The schedule of filing

deadlines is available from the Clerk, at the Town Hall and on the Town of New Boston website. Applications received after the filing deadline shall be scheduled for a hearing at the next month's regular meeting.

- d. Properly completed applications received on time shall be scheduled for public hearing within 30 days of submission.
- e. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.
- f. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.
- g. Plans shall be prepared, stamped and signed by a New Hampshire licensed land surveyor and shall be submitted with any application for a dimensional variance, along with such other information that the applicant deems necessary to present the application to the Board. The Board has the authority to, and may request additional plot plans or surveys. Copies of the drawings drawn at an appropriate scale that allows for clarity and clearly demonstrates the requested variance. The minimum acceptable size shall be 11" x 17". If a full size plan is required for the application, three (3) full size copies shall be submitted with the application. Applications for a use variance shall submit a copy of the tax map or other scale drawing along with such other information that they deem necessary to present the application to the Board. The Board reserves the right to require further plans, including plans prepared by a surveyor or engineer licensed in the State of New Hampshire.
- h. The applicant shall submit a list of parties to be notified of the public hearing. This list shall include the applicant, the property owner if different from the applicant, all abutters as defined in RSA 672:3, as amended, and all holders of conservation, preservation or agricultural easement holders defined in RSA 477:45, as amended. The list shall include the tax map and lot number of the subject property and the abutting lots, as well as the mailing addresses of the

above-noted parties. The information shall be as indicated in Town of New Boston Assessors Records within five (5) days prior to submittal.

6.2 Application Withdrawal / Request to Reschedule.

- a. Applicants who wish to withdraw their application shall submit a written request with the Zoning Clerk/Planning Department.
 - If the request to withdraw the application is received before the hearing notice for the scheduled hearing is released to the abutters and/or general public, the withdrawal request shall be granted by the Zoning Clerk/Planning Department.
 - If the request to withdraw the application is received after the hearing notice for the scheduled hearing has been released to the abutters and/or general public, the Board shall consider the request at the scheduled hearing.
- b. Applicants who wish to reschedule their applications for a later hearing shall submit a written request with the Zoning Clerk/Planning Department.
 - If the request to reschedule the application is received before the hearing notice for the scheduled hearing is released to the abutters and/or general public, the request to reschedule shall be granted by the Zoning Clerk/Planning Department.
 - If the request to reschedule is received after the hearing notice for the scheduled hearing have been released to the abutters and/or general public, shall be deemed as a request for a continuance and the Board shall consider the request at the scheduled hearing. The Board shall first decide whether to accept the request for continuance and a majority vote of the Board shall be required for any action taken. Continuation requests that are granted by the Board and rescheduled to a date certain do not require re-notification.

6.3 Public Notice.

- a. Public notice of public hearings on each application shall be given in a local newspaper and shall be

posted at the Town Hall, 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 and other parties deemed 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. Costs of all required notices must be paid for, in advance by the applicant.

6.4 Public Hearings.

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

- a. The Chair shall call the hearing in session.
- b. The Clerk shall report on how public notice and personal notice were given.
- c. Members of the Board may ask questions at any point during testimony.
- d. Each person who appears shall be required to state his or her name and address and indicate whether he or she is a party to the case or an agent or counsel of a party to the case.
- e. Any member of the Board, through the Chair, may request any party to the case to speak a second time.
- f. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
- g. The applicant or designated representative shall be called to present their appeal.

- h. If present at the meeting, the Building Inspector/Code Enforcement Officer may, at the request of the Board, present evidence on any action taken with regard to the property.
- i. Those appearing in favor of the appeal shall be allowed to speak.
- j. Those in opposition to the appeal shall be allowed to speak.
- k. The applicant and those in favor shall be allowed to speak in rebuttal.
- l. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- m. The chairperson of the zoning board of adjustment or the chairperson of the building code board of appeals or, in the chairperson's absence, the acting chairperson may administer oaths. Whenever the board exercises its regulatory or quasi judicial powers, it may, at its sole discretion, compel the attendance of witnesses. All expenses incurred under this section for compelling the attendance of a witness shall be paid by the party or parties requesting that a witness be compelled to attend a meeting of the board. Pursuant to RSA 673:15.
- n. 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.
- o. The public hearing on the appeal shall be declared closed when the Board feels all necessary information to reach a decision has been gathered.
- p. No new business to be heard after 9 p.m. and the Board may suspend the Hearing at 10 p.m. to a date certain.

6.5 Deliberations.

- a. Once the public portion of the hearing has been closed, the Board may commence deliberations and discuss and act upon the application.

- b. Deliberations may be continued until later in the meeting or at a future meeting. The Board may vote to continue the hearing to a specific date, time and place with no additional notice required as long as the formal announcement is made before voting to continue the hearing.
- c. During deliberations there shall be no further public input unless further clarification is requested by the Chair.

6.6 Decisions.

The Board shall decide all cases within 30 days of the close of public hearing and shall approve, approve with conditions, or deny the appeal. Notice of the decision will be made available for public inspection within five (5) business days as required by RSA 676:3, as amended. If the appeal is denied, the notice shall include the reasons therefor. The notice shall also be given to the Planning Board, Board of Selectmen and other Town officials as determined by the Board. Notice shall be posted at the Town Hall.

6.7 Voting.

Should a motion result in a tie vote or not receive the necessary three 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.

6.8 Motion for Rehearing.

- a. Any motion for rehearing shall be filed with the Clerk or at the Planning Department during normal business hours, after the applicant has contacted the Clerk to inform him or her that such a motion for rehearing will be submitted.
- b. A motion for rehearing shall be filed within 30 days after any decision by the Board, beginning with the date following the date upon which the Board voted to approve or disapprove the application and specifying in the motion for rehearing the ground(s) therefor, as per RSA 677:2, as amended.

- c. In considering a motion for rehearing, the Board shall determine that the party requesting the rehearing has standing as defined in RSA 677:2, as amended.
- d. A Board meeting to consider a motion for rehearing shall be considered a public meeting subject to the minimum posting requirements of RSA 91-A, as amended, and no formal notice is required to the applicant, petitioners or abutters. It shall not be considered a public hearing and no testimony shall be taken.
- e. The Board shall within 30 days of the filing of a motion for rehearing either grant or deny the application or suspend the decision complained of pending further consideration.
- f. 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 hearing.
- g. Notification of the rehearing shall follow the procedures set forth in Section 5.2, Public Notice, above.

Section 7 Records

- 7.1 The records of the Board shall be kept by the Clerk and made available for public inspection at the Town Hall in accordance with RSA 673:17.
- 7.2 Final written decisions will be placed on file and made available for public inspection within five (5) business days after the decision is made in accordance with RSA 676:3.
- 7.3 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 five (5) business days of the public meeting in accordance with RSA 91-A:2,II.

Section 8 Amendments

- 8.1 These Rules of Procedure may be amended by a majority vote of the members of the Board at a regular meeting of the Board.

Section 9 Waivers

9.1 Any portion of these Rules of Procedure may be waived in such cases where, by a majority vote of the members present, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

Section 10 Joint Meetings and Hearings

10.1 RSA 676:2: An applicant seeking a local permit may petition two or more land use boards to hold a joint meeting or hearing when the subject matter of the requested permit is within the responsibilities of those land use boards.

10.2 Each board shall adopt rules of procedure relative to joint meetings and hearings, and each board shall have the authority on its own initiative to request a joint meeting.

10.3 Each land use board shall have the discretion as to whether or not to hold a joint meeting with any other land use board. The planning board chair shall chair joint meetings unless the planning board is not involved with the subject matter of the requested permit. In that situation, the appropriate agencies which are involved shall determine which board shall be in charge.

10.4 Procedures for joint meetings or hearings relating to testimony, notice of hearings, and filing of decisions shall be consistent with the procedures established by this chapter for individual boards.

10.5 Each local land use board shall be responsible for rendering a decision on the subject matter which is within its jurisdiction.

Section 11 Severability

11.1 If any provision herein shall be held to be invalid, for any reason, by a court of law, such holding shall not invalidate any other provisions contained in these Rules of Procedure.

11.2 In the event of any conflict between the language of these Rules of Procedure and the governing statute, the statute shall prevail.

Section 12 Standing Order

12.1 The granting by the Board of any application for a variance, special exception, equitable waiver of dimensional requirement or administrative appeal is expressly conditioned upon strict conformity by the applicant with the plans, descriptions and/or measurements submitted to the Board. When ruling on an application, the Board, in its discretion, may vote to approve a motion to waive this Standing Order, however, in the absence of passage of such a motion, this Standing Order shall be in full force and effect.