



## **ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE**

### **AUTHORITY:**

These rules of procedure are adopted under the authority of the New Hampshire Revised Statutes Annotated, 1983; Chapter 676:1, as amended in the most recent edition of the New Hampshire Statutes.

### **OFFICERS:**

1. A **Chair** shall be elected annually by a majority vote of the Board in the month of April or at the first meeting after the annual Town Election, whichever is sooner. The Chair shall preside over all meetings and hearings, appoint such committees as directed by the Board, and shall affix a signature in the name of the Board.
2. A **Vice Chair** shall be elected annually by a majority vote of the Board in the month of April or at the first meeting after the annual Town Election, whichever is sooner. The 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.

### **MEMBERS AND ALTERNATES:**

1. The Board shall consist of five (5) members who shall be appointed by the Select Board. Members must reside in Stratham. They 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 and Code Enforcement Officer as soon as possible. Members, including the Chair and the other officers of the Board, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.
2. Up to three (3) alternate members may be appointed by the Select Board. The alternates shall attend all meetings to familiarize themselves with the workings of the Board. They shall be ready to serve as a voting member of the Board whenever a regular member of the Board is unable to fulfill required responsibilities.

### **MEETINGS:**

1. Meetings may be held at the request of the Chair provided public notice and notice to each of the members and alternates are given in accordance with RSA 91-A:2, II.
2. Public Hearing Meetings: Public hearings will generally be held at the Municipal Center, at 7:00p.m. on the first Tuesday of each month. If the first Tuesday of the month falls on a holiday or if the Municipal Center is unavailable to hold the public hearing on the first Tuesday, the public hearing will be scheduled to occur at a date, time and place as determined by the Chair, after consultation with the Code Enforcement Officer or Director of Planning and Building.

Public hearings will be scheduled only when there is business to conduct.

If a public hearing is scheduled and subsequently cancelled, a notice of cancellation shall be posted at the Municipal Center and, if practical, on the Town's website and elsewhere as determined by the Chair.

3. **Quorum.** A quorum for all meetings of the Board shall be three members, including alternates sitting in the place of members. The Board will make every effort to ensure that a five-member Board is present for the consideration of any appeal. If any regular Board member is absent from any meeting or hearing, or requests disqualification 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 for an entire case or for an entire meeting.

A vote of three members voting in the affirmative, regardless of the number of members in attendance, is required to approve an application. In the event that fewer than five members are anticipated for a public hearing, the applicant shall be afforded the opportunity to postpone the public hearing at least one time to a future meeting date.

4. **Disqualification.** If any member requests disqualification 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 in 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. The disqualified member shall refrain from sitting at the Board table during the public hearing and during all deliberation on the case.
5. **Order of Business.** The order of business for meetings shall be as follows:
  - a. Call to order.
  - b. Roll call by the Chair.
  - c. Adoption of minutes of previous meeting.
  - d. Open public hearing.
  - e. New cases(s).
  - f. Unfinished business/old case(s).
  - g. Communications and miscellaneous.
  - h. Other Board business.
  - i. Adjournment.
6. **Meeting Schedule.** The annual meeting schedule will be voted on no later than December 1 of the preceding year and will consist of a minimum of one meeting per month.
7. **Site Walk.** Whenever a majority of board members believe it would be helpful, a site walk of the subject property shall be scheduled. The site walk shall be conducted at such other time as the Board shall agree. The time, date and place of the site walk shall be given as part of the public notice for the application, appeal or action. Board members intending to sit on the Board during the determination of a particular case are strongly encouraged to attend the site walk.

During the site walk, the applicant shall identify key aspects of the property that the applicant deems important for consideration by the Board. The site walk is not the appropriate venue for taking testimony, and the Chair should restrict any attempts by persons to testify during the site walk. The Chair should direct all such persons to attend the public hearing to offer testimony at the appropriate time.

8. **Continuations of Public Hearings.** A public hearing may be continued for any of the following reasons:
  - a. Upon written request of the applicant (if prior to a hearing) or upon oral request at the time of the hearing.
  - b. Upon reaching 9:30 p.m. all cases may be discussed and decided on the following Thursday at 7:00 pm.
  - c. Upon the membership falling below five members.
  - d. Upon the Board resolving that additional information or evidence is necessary, or for any other good cause.
9. **Cancellations.** If a public hearing is scheduled and subsequently canceled, a notice of cancellation shall be posted at Town Hall and, if practical, on the Town's website and elsewhere as determined by the Chair. This may include a lack of quorum or an inclement weather situation. If there is no quorum present and the Town Staff Member cannot reach the board members, then staff and board members present will wait 15 minutes before determining the meeting cancellation.

#### **JOINT MEETINGS AND HEARING:**

1. RSA 676:2 provides that the Board may hold joint meetings or hearings with other "land use boards", including the Planning Board, the Heritage Commission, and Conservation Commission, 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 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 Chair shall chair the joint hearing. If the other board is not the Planning Board, then the Zoning 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.

## **NONPUBLIC SESSIONS:**

The decision to hold a nonpublic session must be included in the minutes of the open session. Minutes must be kept of the nonpublic session. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes of nonpublic sessions shall include the names of members, persons appearing before the Board, and a brief description of the subject matter discussed and final decisions. Refer to RSA 91-A:3, III as amended.

## **APPLICATION/DECISION:**

### **1. Applications.**

- a. Prior to filing an application with the Board, the applicant must first make application to the Building / Code Enforcement Department for a determination of need for relief. Should it be necessary, the applicant will be denied a building permit or obtain a written denial for the proposed activity from the Code Enforcement Officer. An application before the Board will only be accepted and processed after the issuance of a denial letter.
- b. Each application for a hearing before the Board shall be made on forms provided by the Board and administered by the Building or Planning staff.
- c. When an application involves the Wetlands Conservation District, the Shoreland Protection District, or a vegetated non-disturbance buffer area, it shall be forwarded by Town staff to the Conservation Commission for an advisory opinion prior to the Board hearing the case. Additionally, the Zoning Board may request an advisory opinion of the Conservation Commission for any application pending before the Board.
- d. Applications must be received by the Building / Code Enforcement and/or Planning Department twenty-eight (28) days prior to the next regularly scheduled meeting.
- 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. The Code Enforcement Officer will review applications for technical completeness, and notice the Board of that. Any written report on the merits of the case will be presented with a copy to the applicant no less than three (3) business days before the meeting.

### **2. Public Notice.**

- a. Public notice of public hearings on each application shall be given in a local newspaper and shall be posted at several locations within the Stratham Municipal Center not less than five (5) business days before the date fixed for the hearing not including the date the notice is posted or the date of the public hearing. Notice shall include the name of the applicant, description of the property including 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 and regular first class mail to the applicant and every abutter and holders of conservation, preservation, or agricultural preservation restrictions not less than five days before the date of the hearing. Notice shall also be given to the Planning

Board, Town Clerk, Board of Selectmen, and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice.

- c. The applicant shall pay for all required notice costs in advance.

### **3. Public Hearing.**

- a. The Chair shall introduce the first case or ask the Town staff representative to present the first case.
- b. If queried by a member of the Board, the Town staff representative shall provide a description of the application and report on how the public notice and personal notice were given.
- c. The applicant, or the applicant's representative, shall be responsible to present and describe the application.
- d. Members of the Board may ask questions at any point during the testimony. Alternates may ask questions at any point during the testimony, as well as any member of the audience. All questions and comments shall be posed through the Chair.
- e. All persons who appear shall be required to state their name and address and indicate whether they are a party to the case or an agent or counsel of a party to the case.
- f. Any member or alternate of the Board, through the Chair, may request any party to the case to speak a second time.
- g. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
- h. All those in attendance at the public hearing shall be permitted to speak. Written correspondence related to the application and received by 4:00 pm on the night of the public hearing shall be read into the record. The Chair, at his or her discretion, may provide the applicant or other parties, the opportunity to speak in rebuttal to comments made. The Chair, at his or her discretion, may limit comments from those in attendance to a specific duration in order to ensure a timely and efficient public hearing process.
- i. The Board will hear any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Zoning Ordinance and state land use law.
- j. Public comment ends at the close of the public hearing.
- k. Board deliberation begins after close of the public hearing. The Board may postpone a public hearing, provided the date of the next public hearing is announced at the first hearing.
- l. At any juncture during the public hearing and deliberative process, the Board may call upon Town Staff for administrative, regulatory, and/or technical guidance on the application.

### **4. Decisions.**

The Board shall decide all cases during the public hearing or within 30 days of the close of the public hearing and after all final application materials have been submitted by the applicant. The Board shall approve, approve with conditions, or deny the application.

**FEES:**

1. The fees and payable for each application are as follows:
  - a. Application Fees:
    - \$100.00 per variance request
    - \$100.00 per Special Exception
    - \$100.00 per Appeal from Administrative Decisions
    - \$100.00 per Equitable Waiver of Dimensional Requirements
  - b. Public Notice Fee: \$150.00.
  - c. Certified Mail Fee: \$10.00, to be sent to each applicant, agent, attorney, abutter, and interested party entitled to notice under New Hampshire Law.
  - d. Notice of Decision to include certified mailing fee of \$10.00.
2. The applicant shall pay for all additional fees for public notice and certified mail resulting from the following, except as provided in sections 4 and 5 below:
  - a. A rehearing being granted on an application, regardless of who requests the rehearing, and/or
  - b. Any other hearing on the application which requires additional public notice because of an appeal to the superior court or any other intervening litigation, or for any other reason.
3. Failure of the applicant to pay for all additional fees for public notice and certified mail required by section 2 above shall result in the Board taking whatever action, including but not limited to revocation of the approval, as it deems just and reasonable under the circumstances.
4. If the need for additional notice under section 2 above is due entirely to the fault of the Board, the Board shall pay for the additional notice.
5. If the Select Board is seeking the rehearing or is otherwise primarily responsible for the requirement for additional fees for public notice or otherwise, then the town, and not the applicant, shall pay for all such notice fees.

**RECORDS:**

1. The records of the Board shall be kept by Town staff and made available for public inspection at the Town Hall in accordance with RSA 676:17.
2. Final written decisions will be included in the minutes of the meeting and will be made available for public inspection within five (5) business days after the decision is made. RSA 676:3
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 the public for inspection within five (5) business days of the public meeting. Approval of the minutes of meeting will take place at a regularly scheduled meeting of the Board.
4. Meetings are audio recorded for the purpose of preparing meeting minutes. Barring any unforeseen

technological issues, recordings will be provided to the public upon request up to 60 days from the date of the meeting.

### **PROCEDURE FOR TOWN COUNSEL OPINIONS**

Should a question arise at hearing related to any issue, including any issue related to a pending application, the Board may vote to continue the meeting to consult with Town Counsel or request an opinion from Town Counsel before continuing taking evidence or deliberating. In such event, the Board shall continue the matter for reasonable time to allow for receipt of the legal opinion.

All communication with Town Counsel shall be made through the Director of Planning and Building or the Code Enforcement Officer (CEO), unless Town Counsel is present at a particular public hearing or is present at a closed meeting for purposes of attorney client communication. Upon receipt of an opinion, the Director of Planning and Building or CEO shall provide copies of the opinion to the Board at the ZBA Board meeting for the board members to review, and the Director of Planning and Building or CEO shall collect the documents at the meeting end.

### **AMENDMENTS:**

These rules of procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at a regular meeting, immediately preceding the meeting at which vote is to be taken. This version of the Rules was adopted on December 16, 2025.

### **WAIVERS:**

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.