

# **RULES OF PROCEDURE**

*for the*

## **Zoning Board of Adjustment**



### **Town of Warner, New Hampshire**

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Zoning Board of Adjustment

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# **RULES OF PROCEDURE**

## Zoning Board of Adjustment

### **I. AUTHORITY**

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and as assigned by the Zoning Ordinances of the Town of Warner.

### **II. REGULAR MEMBERS & ALTERNATES**

- A. The Zoning Board of Adjustment shall consist of five regular members.
- B. Each newly appointed or re-appointed member and alternate member shall be sworn in and take an oath of office as required. The oath of office will be administered by the Town Clerk or a town Selectboard member.
- C. Members, including alternates, are required to attend all meetings of the Board. Members unable to attend a meeting shall notify the Chair and Land Use office. More than three (3) unexcused absences in a twelve-month period shall be cause for review of that individual's ability to perform the duties assigned. (RSA 673:13)
- D. A Chair shall be elected at the Annual Zoning Board meeting in April by a majority vote of the Board. The Chair shall preside over all meetings and hearings.
- E. A Vice-Chair shall be elected at the Annual Zoning Board meeting by a majority vote of the Board. 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.
- F. In the absence or unavailability of the Chair and Vice Chair the members present shall select a regular member to exercise the duties of the Chair.
- G. The Chair and Vice-Chair shall serve for one year and shall be eligible for re-election.
- H. Up to five alternate members shall be appointed by the Selectboard.
- I. When a regular Board member is absent from a meeting or hearing, or recuses himself from sitting on a particular application, the Chair shall designate one of the alternate members to sit in place of the absent or recused member and such alternate shall be in all respects a regular member of the Board while so sitting.
- J. 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, and actively participate and interact with other board members, the applicant, abutters and the public. Alternates shall be allowed to participate in the deliberations by the Board until a motion has been made and seconded.

### **III. STAFF**

- A. A Land Use Secretary shall be hired by the Selectboard to serve the Zoning Board of Adjustment.

### **IV. MEETINGS**

- A. Regular meetings shall be held at the Warner Town Hall at 7:00 p.m. on the second Wednesday of the month, when needed. Other meetings may be held on call of the Chair, provided public and member notice is given at least five (5) days in advance of such meetings. [Excluding Sundays and legal holidays]
- B. Board packets shall be available to members by the Thursday prior to a meeting.

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- C. Votes on matters before the Board shall be taken after the matter has been moved, seconded and discussed. Matters shall be decided by majority vote of the members. In the case of a tie vote the motion fails.
- D. A public hearing may be continued pending the submission of additional material or information, the correction of noted deficiencies, or because of the late hour. A motion to continue an application hearing or meeting shall include a date, time, and location for the continued meeting.
- E. Nonpublic sessions shall be held only in accordance with RSA 91-A:3.

#### **V. DECISIONS ON APPLICATIONS**

- A. The Board shall act upon applications within 30 days of the close of the public hearing. The Board will approve, approve with conditions, or deny applications. The Decision shall state the name of the applicant, map and lot numbers, zone designation, the type of application, and the case number. The Decision shall state the findings of the Board, including criteria or conditions.
- B. Notice of decision will be posted at the Board's office in the Warner Town Hall within 5 business days after the decision is made. Decisions are signed by the Chair, forwarded to the applicant, copied to applicant's file in the Land Use office, provided to the Town Clerk, posted for public inspection, and copied to others as needed. RSA 676:3

#### **VI. RECORDS**

Records of the Zoning Board shall be kept by the Secretary/Clerk and made available for public inspection in the Zoning Board's office and Town Clerk's Office in the Warner Town Hall, in accordance with statutory requirements.

- A. Minutes of all meetings shall be open to public inspection within 144 hours (6 days) of the public meeting. Minutes will be posted to the Town website when approved.
- B. Audio recordings of meetings can be deleted upon approval of minutes. The Board may vote to request the audio recordings be saved for a maximum of one year from the approval date.
- C. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made.

#### **VII. AMENDMENTS**

Amendments to any form or to the 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 prior to the 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.

#### **VIII. JOINT MEETINGS AND HEARINGS**

The Board may hold a joint meeting or hearing with other land use boards and commissions, provided the other board agrees to a joint meeting or hearing. (RSA 676:2)

- A. Joint meetings with other boards may be held when jointly called by the Board Chairs.
- B. If the other board is the Planning Board, the Planning Board Chair shall chair the joint hearing.
- C. 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.

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- D. Special Exception or Variance requests shall be presented first, using the same rules of procedure.
- E. Board members of either board may ask questions at any time.
- F. Decisions shall only be made when the joint hearing is over.
- G. Each board will discuss and vote on its own decisions after the joint hearing is closed, or on a date specified before the meeting is adjourned.

#### **IX. QUORUM**

- A. A quorum for all meetings of the Board shall be three members, including alternates sitting in place of regular members. RSA 673:10 III
- B. If there are less than five members 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, that shall not solely constitute grounds for a rehearing should the application fail.
- C. If the applicant chooses to postpone, due to less than a full board present, the board shall, before adjourning, announce the time, date, and location of the continued hearing. Otherwise, the board shall provide new notice to all parties.

#### **X. DISQUALIFICATION / RECUSAL**

- A. A member who finds it necessary to recuse themselves from sitting on a particular application shall notify the Chair as soon as possible so that an alternate may be requested to sit in their place. The recusal shall be announced by either the Chair or the member recusing themselves before the beginning of the public hearing on the application. The member recusing themselves shall absent themselves from the board table during the public hearing and during all deliberations on the application. A board member who is an abutter to a property under review by the Board shall not sit for any hearing, review or vote on the application.
- B. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member may request the board to vote on the question of recusal. Any such request shall be made before the public hearing begins, unless the information upon which the request is based is not disclosed to the board before the commencement of the public hearing. The vote shall be advisory and non-binding. A potential conflict of interest might include but is not limited to a financial, legal or family relationship with the applicant, abutter status, or any special interest that might affect the objectivity of the member. (RSA 673:14)

#### **XI. ORDER OF BUSINESS**

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

- A. Call to order by the Chair.
- B. Roll Call
- C. Elevate Alternates for absent or recused or disqualified members
- D. New Business
- E. For each application submitted:
  - 1. Accept or deny application for completeness and consider regional impact
  - 2. Hold Public Hearing
  - 3. Board deliberates. Motions made. Vote to grant, grant with conditions, or deny application. The Chair shall always vote last.

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4. After the Board votes the Chair reads this statement into the record:  
*New Hampshire RSA 677:2 provides that the Selectboard, any party to the action, or any person directly affected has a right to appeal this decision within 30 days after the date of the decision. This notice will be placed on file and made available for public inspection in the records of the ZBA.*
- F. Review minutes of previous meeting.
- G. Unfinished business
- H. Communications and Miscellaneous
- I. Adjournment

## **XII. APPLICATIONS**

- A. Each application shall be made on forms available on-line or in the Land Use office and shall be presented to the Board Secretary/Clerk who shall review the application and record the date of receipt over their signature. The Secretary/Clerk shall collect all fees and forward them to the Town Bookkeeper.
- B. Upon receipt of an application, the zoning board of adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable.
- C. Applications shall be received at least 15 days before the date of the hearing.
- D. Application forms shall be reviewed and adopted by resolution of the Board.

## **XIII. PUBLIC HEARING NOTICE**

- A. Notice of a public hearing shall be given in a local newspaper and posted at 3 locations in Warner, including, the Warner Town Hall, the Warner Post Office, and the town web site, not less than 5 days before the date of the hearing. Notice shall include the name of the applicant, type of appeal being made, provisions of the ordinance concerned, tax map, lot identification, zone designation, the date, time and place of the hearing. RSA 676:7
- B. Personal notice shall be made by certified mail to the applicant, abutters, holder of conservation, preservation, or agricultural preservation restrictions, and other parties deemed by the Board to have special interest, not less than 5 days before the date of the public hearing. Said notice shall contain the same information as the public notice. The cost of the certified mail shall be paid in advance by the applicant. RSA 676:7
- C. If the Board determines that an application has potential for regional impact, notification shall be given to any affected municipality and the CNHRPC in compliance with RSA 36:57 and RSA 36:56

## **XIV. PUBLIC HEARING**

The conduct at public hearings may be governed by the following rules at the discretion of the Chair.

- A. The Chair shall open the hearing.
- B. The Secretary/Clerk or Chair shall introduce the application, confirm that public and personal notice was given, and that all fees have been paid.
- C. The applicant, or their designated representative, shall present the application and review the information.
- D. Members of the Board may ask questions at any point during testimony.

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- E. Abutters will be called upon to ask questions or comment on the application.
- F. Each person who speaks shall be required to state their name and address for the record.
- G. All questions shall be directed to the Chair.
- H. The general public will be called upon to ask questions or comment on the application.
- I. The Board will hear with interest any evidence which pertains to the facts of the application or how the facts relate to the provisions of the town Zoning Ordinance, Master Plan, or state zoning and planning statutes or affect abutting landowners. All parties shall be given ample opportunity to speak.
- J. The hearing on the application shall be declared closed or continued by the Chair and the Board meeting reopened.

#### XV. ON-SITE VISITS

Board members should familiarize themselves with the property under discussion and the basic characteristics of the area. If needed, a quorum of the Board may vote to schedule an on-site visit. Visits attended by a quorum must be noticed and conducted as a public meeting and the public has the right to attend. Individual site visits are the responsibility of the individual board members to schedule with the applicant. Both individual and public site visits are for observation of the property only. No evidence shall be taken and there shall be no discussion of the evidence or deliberation at a site visit.

#### XVI. ADDITIONAL RULES OF ORDER

- A. **Abstention:** Members shall be allowed to abstain from voting. Members abstaining from voting shall indicate the reason. Such vote shall not be counted as a Yes or No, but shall be considered in the total of members voting.
- B. **Adjournment:** The Board by a majority vote may declare the meeting adjourned if the agenda is completed and there is no further business or because of the late hour. A motion to adjourn is not debatable.
- C. **Alternate Members Designation:** Whenever a regular member of a local land use board is absent or whenever a regular member recuses himself or herself, the Chair shall designate an alternate, to act in the absent member's place. RSA 673:11
- D. **Amendments:** An amendment to a motion may strike out words, add words, or strike-out and add words.
- E. **Call to Order:** The Chair shall call the meeting to order at the time and location noticed.
- F. **Debate:** Members shall be recognized by the Chair to speak. All voting members shall have equal consideration for speaking. At the discretion of the Chair, debate may be in the form of a general conversation. Members shall be allowed to speak at least twice for up to 5 minutes on a matter. After a reasonable discussion time the Chair or members may request a vote on the question. A majority of the voting members may override a request to continue a discussion and require voting on the question. Debate shall be allowed on all motions unless forbidden. Debate is not allowed on motions for adjournment or recess.
- G. **Default Procedure:** The Board will follow the rules of order within these Rules of Procedure. In the absence of a specific rule, the Chair shall determine matters of procedure. Failure to strictly follow standard parliamentary rules of procedure shall not invalidate any action taken by the Board.

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- H. **Electronic Devices:** Board members may use electronic devices during Zoning Board of Adjustment meetings to support the activities of the Board. Any item shared with the Board at a public meeting shall be made available as part of the public record (example: digital picture, electronic map, etc.)
- I. **Ex Parte Communications:** Members and alternate members of the Board shall not engage in ex parte communications regarding an application before the Board.
- J. **Extensions of Time:** Any three Board Members may request an extension of time before voting on any proposal before the Board. If such an extension is requested, the Board shall schedule a continuance at a date mutually agreeable to the applicant and the ZBA.
- K. **Motions:** A member shall not interrupt another who is speaking to make a motion. If there is no second to a motion, the motion fails. There shall only be one motion on the floor at a time, except a motion may be made for an amendment to the initial motion. Only one amendment to a motion may be considered at a time. Friendly suggestions by other members may be made to fine-tune a motion prior to debate. Prior to debate and voting the Chair shall restate the motion. The Board may vote to continue a motion to a stated date in order to draft a more detailed motion to be presented to the Board in writing. At the request of any member, the motion shall be put into writing. Motions shall contain the name of the applicant, map and lot numbers, designated zone and what is being approved/or/denied. All Board motions shall be made, seconded, discussed and voted to approve/or/deny/or continue.
- L. **Point of Order:** A question to a point of order (whether correct procedure is being followed) may be made at any time. The Chair shall immediately rule on the point of order.
- M. **Recess:** The Chair may call for a short recess providing a time is stated to reconvene the proceedings. Said recess should normally not exceed 10 minutes. A motion to recess is not debatable.
- N. **Reconsideration:** A member voting on the winning side of a question may make a motion to reconsider.
- O. **Special meetings:** Special meetings may be called by the Chair, or in her/his absence by the Vice-Chair, or at the request of three regular members of the Board, provided public notice and notice to each member is given at least 48 hours in advance of the time of such meeting. The notice shall specify the purpose of the meeting. There shall be no new business placed on the agenda of any special meeting.
- P. **Voting:** All voting shall be taken by roll call except on routine administrative matters which may be by voice vote. At the request of any member, the Chair shall direct that the vote be taken by roll call and entered in the record on any question before the Board. The sequence for taking roll call shall be determined by the Chair.
- Q. **Vote of Absent Members:** Unless a Member has attended the meetings on a matter or has examined the record and become familiar with the evidence presented from a transcript of the proceedings, he or she shall not cast a vote on the matter.
- R. **Voting Members Necessary for Decision:** No less than 3 concurring votes are necessary for a decision. Less than 3 votes results in a failed motion. A majority of the voting members present are required to override a request to continue discussions or to override a decision of the Chair.