

TOWN OF WARNER, NEW HAMPSHIRE



ZONING BOARD of ADJUSTMENT RULES OF PROCEDURE

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TOWN OF WARNER
Zoning Board of Adjustment
Rules of Procedure

PURPOSE and INTENT

These Rules of Procedure shall govern the operation of meetings and business before the Warner Zoning Board of Adjustment in carrying out its duties and responsibilities as assigned to it by the ordinances of the Town of Warner and the Laws of the State of New Hampshire. Where there appears any conflict between these Rules and either state laws or the Town Charter, the Law and Charter shall govern.

I. AUTHORITY

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

II. OFFICERS

1. A Chairperson shall be elected at the April Zoning Board meeting by a majority vote of the Board. The Chairperson shall preside over all meetings and hearings, and appoint such committees as directed by the Board.
2. A Vice-Chairperson shall be elected at the April Zoning Board meeting by a majority vote of the Board. The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters which come before the Board during the absence of the Chairperson.
3. In the absence or unavailability of the Chairperson and Vice Chairperson the members present shall select a Regular Member to exercise the duties of the Chairperson.
4. A Secretary/Clerk shall be hired by a majority vote of the Board of Selectmen. The Secretary/Clerk shall maintain a record of all meetings, transactions and decisions of the Zoning Board, and perform other such duties as the Zoning Board may direct.
5. All officers shall serve for one year and shall be eligible for re-election.
6. Up to five alternate members shall be appointed by the Selectmen to serve whenever a regular member of the Board is unable to fulfill their responsibilities. The Zoning Board shall submit the names of recommended candidates to the Selectmen for their concurrence and appointment.
7. At Zoning Board meetings, 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 not be allowed to make or second motions and shall not participate in any way during the deliberations by the board after a motion has been made and seconded. During portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made.

III. MEETINGS

1. Regular meetings shall be held at the Warner Town Hall at 7:00 p.m. on the second Wednesday of each month, if needed. Other meetings may be held on call of the Chair, provided public notice and notice to each member is given at least five (5) days [excluding Sundays and legal holidays] in advance of such meetings.
2. All votes on any matters to come before the Board shall be taken after the matter has been duly moved, seconded and discussed. Unless otherwise stated, all matters shall be decided by the majority vote of all of those members (both regular and designated alternates) present and voting. In the case of a tie vote the Motion fails
3. **Continuance:** A public hearing on a noticed matter may be continued pending the submission of additional material or information or the correction of noted deficiencies. A motion to continue an application hearing or meeting shall require a date, time, and location for the continued meeting prior to adjournment of the matter.

IV. DECISIONS ON APPLICATIONS

The Board shall act upon all applications within 30 days. The Board will approve, approve with conditions, or deny the application. When an application is denied, the Board shall notify the applicant in writing within 72 hours of the denial, stating the reasons for the action.

V. RECORDS

1. The 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.
2. Minutes of all meetings, including names of Board members, persons appearing before the Board, a brief description of the subject matter discussed, and all votes taken shall be open to public inspection within 144 hours of the public meeting.
3. Audio recordings of meetings shall be deleted upon approval of minutes. The Board by a majority vote may request the audio recordings be saved for a maximum of one year from the approval date.

VI. 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 two successive meetings immediately preceding the meeting at which the vote is to be taken.

VII. JOINT MEETINGS AND HEARINGS

1. RSA 676:2 provides that the Board may hold joint hearings with other town boards and commissions, including the Planning Board. Each board shall have discretion as to whether or not to hold a joint meeting with any other board.
2. Joint business meetings with any other land use board may be held at any time when called jointly by the chairmen of the two boards.

3. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chairperson shall chair the joint hearing.
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 in these conditions.
6. Special Exception or Variance requests shall be presented first, using the same rules of procedure as presented.
7. Any board member of either board may ask questions at any time.
8. No decision shall be made by either board until the Joint Hearing is over.
9. Each board will discuss and vote on its own decisions after the hearing is closed, or on a date specified before the meeting is adjourned.

VIII. QUORUM

1. A quorum for all meetings of the Board shall be four members, including alternates sitting in place of regular members.
2. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular application, 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.

IX. DISQUALIFICATION

1. Any member who finds it necessary to disqualify himself 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 disqualification shall be announced by either the chair or the member disqualifying himself before the beginning of the public hearing on the application. The member disqualifying himself shall absent himself from the board table during the public hearing and during all deliberations on the application. Any 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.
2. 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 similar special interest that might affect the objectivity of the member. (re: RSA 673:14)

X. ORDER OF BUSINESS

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

- a) Roll Call
- b) Minutes of previous meeting
- c) For each application submitted :
 - 1) Review of application
 - 2) Acceptance or rejection of application submitted
 - 3) Close meeting and open Public Hearing
 - 4) Hold hearing

- 5) Close Public Hearing and reopen meeting
- 6) Approve, deny, or continue the application.
- d) Unfinished business
- e) New business
- f) Communications and Miscellaneous
- g) Adjournment

XI. APPLICATION/DECISION

- 1. Each application shall be made on forms provided by the Board and shall be presented to the Board Secretary/Clerk who shall record the date of receipt over their signature.
- 2. At each meeting, the Secretary/Clerk shall present to the Board all applications received at least 15 days before the date of the meeting.
- 3. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules and procedure.

XII. PUBLIC NOTICE

- 1. Public notice of applications to be placed on the agenda (or for which public hearings are to be held) shall be given in the Concord Monitor and shall be posted at 3 locations in Warner, including the Warner Town Hall, not less than 5 days before the date fixed for the hearing. Notice shall include the name of the applicant, description of the property, action desired by the applicant, location of the property, zone designation, the date, time and place of the hearing.
- 2. Personal notice shall be made by certified mail to the applicant and all abutters, within 200 feet of the property, not less than 5 days before the date the application is to be placed on the agenda or before the date a public hearing is to be held. Notice shall also be given to other parties deemed by 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.

XIII. PUBLIC HEARING

The conduct of public hearings may be governed by the following rules at the discretion of the chair:

- A. The Chairperson shall call the hearing in session.
- B. The Secretary/Clerk or Chairperson shall introduce the application, report how public and personal notice were given, and confirm that all fees have been paid.
- C. The applicant, or their designated representative, shall describe the purpose of the application and review the information provided on plats provided.
- D. Members of the Board may ask questions at any point during testimony.
- E. Abutters will be called upon to ask questions or make comments on the application.

- F. Each person who appears shall be required to state their name and address and indicate whether they are a party to the applicant or an agent or counsel of a party to the applicant.
- G. Any party to the application who wants to ask a question of another party to the application must do so through the chair.
- H. The general public will be called upon to ask questions or make comments 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 land owners.
- J. The hearing on the application shall be declared closed and Board meeting reopened.
- K. The Chairperson shall always vote last.

XIV. SITE VISITS

Preamble: In accordance with the purpose and spirit of RSA 91-A, the Board, and any subcommittees thereof shall make diligent efforts to schedule public site visits open to the public and noticed as a meeting. To the extent that consensus cannot be reached to schedule a public site visit with all Board or subcommittee members, individual site visits may be scheduled as necessary or desirable.

- A. Public Site Visit.** A “public site visit” is defined as a visit conducted by a **quorum of the Board** and is scheduled as a public meeting to a location which is the subject of an application before the Board. It involves going onto the property or visiting areas of the property which are not customarily available for public inspection. Public site visits are conducted after having garnered permission from the applicant, are open to the public, and shall be noticed as a meeting of the Board in accordance with RSA 91-A.
 - 1. Request.** When the Board deems it necessary for the adequate consideration of an application, the Chairman shall request the applicant to allow a site visit by a quorum of the Board. At the same time, the Chairman may ask if unaccompanied visits will be permitted.
 - 2. Scheduling.** Once permission has been granted by the applicant, the Chairman shall schedule a site visit for the Board membership and it shall be noticed as a meeting of the Board in accordance with RSA 91-A.
 - 3. Minutes.** Minutes of a public site visit shall be reported whenever there is a quorum of the Board or Subcommittee of the Board. The Land Use Secretary shall attend the public site visit to record and publish the minutes. If the Land Use Secretary cannot attend, the Chairman will assign a designee to record the minutes.
 - 4. Public and Abutter Conduct/Expectations.** Public site visits take place on the applicant’s land with their permission and at their discretion. In order to ensure decorum the public including the abutters shall refrain from making comments or asking questions during the site visit. The public and the abutters should withhold

their comments and questions to until the next scheduled Board meeting for the continuation of the public hearing on the application.

5. **Board Member - Subcommittee Member Conduct/Expectations.** The Board members and Subcommittee members will stay together in a group and refrain from engaging in private conversation. The Board members and Subcommittee members shall view only the properties relevant to the pending application. The Board members and Subcommittee members can ask questions of the applicant and the abutters. Board members and Subcommittee members shall refrain from making statements of opinion.

B. Individual Member Site Visit. An “individual member site visit” is defined as a visit by an **individual** Board or Subcommittee member to a location which is the subject of an application before the Board, and involves going onto the property or visiting areas of the property which are not customarily available for public inspection. All applicants seeking zoning relief may permit Board members or Subcommittee members to enter onto their property upon arrangement with the applicant or property owner for the purpose of a site visit.

1. **Request.** When the Board deems it necessary for the adequate consideration of an application, the Chairman shall request the applicant to allow a site visit by individual Board members or Subcommittee members. At the same time, the Chairman may ask if unaccompanied visits will be permitted.
2. **Scheduling.** Once permission has been granted by the applicant a Board member or Subcommittee member can contact an applicant, owner, or owner’s designee to schedule a time for the purpose of a site visit if a window of time was not previously agreed upon during a Board meeting between the applicant and the Board Chairman.
3. **Board Member - Subcommittee Member Conduct/Expectations.** Individual member site visits are not a function of a public hearing. Individual member site visits are not considered open to the public or abutters. They are conducted by Board members or Subcommittee members **individually** and **not** as a group. Board members and Subcommittee members shall refrain from asking questions or making comments. The purpose of this type of site visit is for silent observation. A Board member or Subcommittee member shall view only the properties relevant to the pending application

C. Applicant Refuses Permission. An applicant may refuse to grant permission for a site visit. In lieu of a site visit the Board may consider all sources of information including but not limited to printed material and/or other media as part of the public record.

XV. ADDITIONAL RULES OF ORDER

- A. **Default Procedure:** The Board will follow the rules of order within these Rules of Procedure. In the absence a specific rule, the Chairman shall determine matters of

procedure. Failure to strictly follow standard parliamentary rules of procedure shall not invalidate any action taken by the Board.

- B. **Call to Order:** The Chairman shall call the meeting to order at the time and location noticed.
- C. **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 Chairman shall restate the motion. At the request of any member, the motion shall be put into writing.
- D. **Debate:** Members shall be recognized by the Chairman to speak. All voting members shall have equal consideration for speaking. At the discretion of the Chairman, 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 Chairman or members may request a vote on the question. Two thirds 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.
- E. **Amendments:** An amendment to a motion may strike out words, add words, or strike-out and add words.
- F. **Voting Members Necessary for Decision:** A majority of the voting members present decides a question, unless a greater percent is required. Two thirds of the voting members present are required to override a request to continue discussions or to override a decision of the Chairman.
- G. **Recess:** The Chairman 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.
- H. **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 Chairman shall direct that the vote be taken by roll-call and entered on the record on any question before the Board. The sequence for taking roll-call shall be determined by the Chairman. A tie vote or an approval or denial by less than a majority of the voting members constitutes no action.
- I. **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 one of the total voting to determine a total of members voting.

- J. **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 essential to the decision
- K. **Reconsideration:** A member voting on the winning side of a question may make a motion to reconsider.
- L. **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 special meeting not more than two weeks from the date of the request to take action on the proposal. There shall be no new business placed on the agenda of any special meeting.
- M. **Special meetings:** Special meetings may be called by the Chairman or in her/his absence, by the Vice-Chairman, 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.
- N. **Point of Order:** A question to a point of order may be made at any time. The Chairman shall immediately rule on the point of order.
- O. **Subcommittees:** Subcommittee members as selected by the Chairman shall be confirmed by a majority vote of the Board.
- P. **Adjournment:** The Board by a majority vote may declare the meeting adjourned if the agenda is completed and there is no further business. A motion to adjourn is not debatable.
- Q. **Ex Parte Communications:** Members and alternate members of the Board shall not engage in ex parte communications regarding an application before the Board.
- R. **Electronic Devices:** Board members may use electronic devices during Zoning Board of Adjustment meetings only for purposes sanctioned by the Board.