

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**

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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. REGULAR MEMBERS / ALTERNATES / OFFICERS

1. The Zoning Board of Adjustment shall consist of five regular members.
2. Each newly appointed or re-appointed member and alternate member shall be sworn in and take an oath of office as required by RSA 42:1. The oath of office will be administered by the Town Clerk or a town Selectmen.
3. Members, including alternates, are required to attend all meetings of the Board. Any member unable to attend a meeting shall notify the Land Use office. More than three (3) unexcused absences in a twelve-month period may be cause for review of that individual's ability to perform the duties assigned. (RSA 673:13)
4. 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, and appoint such committees as directed by the Board.
4. 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.
5. 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.
6. All officers shall serve for one year and shall be eligible for re-election.
7. 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.
8. 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 deliberations by the Board after a motion has been made and seconded.

III. STAFF

1. A Land Use Secretary/Clerk shall be hired by a majority vote of the Board of Selectmen to serve both the Planning Board and the Zoning Board of Adjustment. The Secretary/Clerk shall maintain a record of all meetings, board communications, transactions, and decisions and shall administer the Land Use office.
2. The Board packets shall be available to members by the Thursday prior to a meeting.

IV. MEETINGS

1. 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 [excluding Sundays and legal holidays] in advance of such meetings.
2. All votes on any matters before the Board shall be taken after the matter has been duly moved, seconded and discussed. Matters shall be decided by the majority vote of the members. 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.
4. Nonpublic sessions shall be held only in accordance with RSA 91-A:3.

V. DECISIONS ON APPLICATIONS

1. The Board shall act upon all applications within 30 days. 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, the case number. The Decision shall include the findings of the Board, such as the criteria or conditions that have/or/have-not been met.
2. Notice of decision will be made available for public inspection at the Board's office in the Warner Town Hall within 5 business days after the decision is made RSA 676:3. Decisions are signed by the Chair. Forwarded to the applicant. Copied to applicant's file in the Land Use office. Forwarded to the Zoning Board, Planning Board, Board of Selectmen, Building Department, Town Clerk, Assessing Clerk and posted online for public inspection.

VI. RECORDS

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.

1. 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 (6 days) of the public meeting.
2. 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.

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 joint hearings with other town boards and commissions, including the Planning Board. Provided the other board agrees to a joint hearing. (RSA 676:2)

1. Joint business meetings with any other land use board may be held at any time when called jointly by the Chairs of the two boards.
2. If the other board is the Planning Board, the Planning Board Chair shall chair the joint hearing.
3. 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;
4. Special Exception or Variance requests shall be presented first, using the same rules of procedure.
5. Any board member of either board may ask questions at any time.
6. Decisions shall only be made when the Joint Hearing is over.
7. 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.

IX. QUORUM

1. A quorum for all meetings of the Board shall be four members, including alternates sitting in place of regular members.
2. When a regular Board member is absent from a meeting or hearing, or disqualifies themselves 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 regular member of the Board while so sitting.

X. DISQUALIFICATION

1. A member who finds it necessary to disqualify 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 disqualification shall be announced by either the Chair or the member disqualifying themselves before the beginning of the public hearing on the application. The member disqualifying 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.
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 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:

1. Call to order by the Chair.
2. Roll Call
3. Elevate Alternates for absence or disqualification of any regular members
4. Review minutes of previous meeting
5. For each application submitted:
 - A. Accept or deny application for completeness
 - B. Chair opens Public Hearing
 - i. Applicant provide testimony
 - ii. Abutters provide comment
 - iii. Public provides commentBoard asks questions
Close public Hearing, or continue to a specified date
 - C. Board deliberates. Motions made. Vote to grant or deny relief to the terms of the ordinance.
 - D. After the Board votes the Chair reads this statement into the record:

“The New Hampshire RSA 677:2: provides that the Board of Selectmen, 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 has been placed on file and made available for the public inspection in the records of the ZBA.”
5. Unfinished business
6. New business
7. Communications and Miscellaneous
8. Adjournment

XII. APPLICATIONS

1. 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 record the date of receipt over their signature. The Secretary/Clerk shall collect all fees and forward them to the Town Bookkeeper.
2. Applications shall be received at least 15 days before the date of the hearing.
3. Application forms shall be reviewed and adopted by resolution of the Board.

XIII. PUBLIC NOTICE

1. Notice of a public hearing shall be given in a newspaper and posted at 3 locations in Warner. The Warner Town Hall, and on the town web site, not less than 5 days before the date fixed for the hearing. Notice shall include the name of the applicant, type of appeal being made, provisions of the ordinance concerned tax map and lot identification, 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 of the public hearing. 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. The cost of the certified mail shall be paid in advance by the applicant.

XIV. PUBLIC HEARING

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

1. The Chair shall call the hearing in session.
2. The Secretary/Clerk or Chair shall introduce the application, report how public and personal notice were given, and confirm that all fees have been paid.
3. The applicant, or their designated representative, shall describe the purpose of the application and review the information provided on plats provided.
4. Members of the Board may ask questions at any point during testimony.
5. Abutters will be called upon to ask questions or make comments on the application.
6. 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.
7. Any party to the application who wants to ask a question of another party to the application must do so through the Chair.
8. The general public will be called upon to ask questions or make comments on the application.
9. 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.
10. The hearing on the application shall be declared closed by the Chair and the Board meeting reopened.
11. The Chair shall always vote last.

XV. 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.

1. **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.
 - A. **Request.** When the Board deems it necessary for the adequate consideration of an application, the Chair shall request the applicant to allow a site visit by a quorum of the Board. At the same time, the Chair may ask if unaccompanied visits will be permitted.
 - B. **Scheduling.** Once permission has been granted by the applicant, the Chair 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.
 - C. **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 Chair will assign a designee to record the minutes.
 - D. **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.

- E. **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.
2. **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.
- A. **Request.** When the Board deems it necessary for the adequate consideration of an application, the Chair shall request the applicant to allow a site visit by individual Board members or Subcommittee members. At the same time, the Chair may ask if unaccompanied visits will be permitted.
 - B. **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 Chair.
 - C. **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
3. **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.

XVI. ADDITIONAL RULES OF ORDER

- 1. **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.
- 2. **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.
- 3. **Alternate Members Designation:** Whenever a regular member of a local land use board is absent or whenever a regular member disqualifies himself or herself, the Chair shall designate an alternate, to act in the absent member's place. RSA 673:11
- 4. **Amendments:** An amendment to a motion may strike out words, add words, or strike-out and add words.
- 5. **Call to Order:** The Chair shall call the meeting to order at the time and location noticed.
- 6. **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. 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.

7. **Default Procedure:** The Board will follow the rules of order within these Rules of Procedure. In the absence 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.
8. **Electronic Devices:** Board members may use electronic devices during Zoning Board of Adjustment meetings only for purposes sanctioned by 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.)
9. **Ex Parte Communications:** Members and alternate members of the Board shall not engage in ex parte communications regarding an application before the Board.
10. **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.
11. **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.
12. **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.
13. **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.
14. **Reconsideration:** A member voting on the winning side of a question may make a motion to reconsider.
15. **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.
16. **Subcommittees:** Subcommittee members as selected by the Chair shall be confirmed by a majority vote of the Board.
17. **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 on the record on any question before the Board. The sequence for taking roll-call shall be determined by the Chair. A tie vote or an approval or denial by less than a majority of the voting members constitutes no action.
18. **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.

19. **Voting Members Necessary for Decision:** A majority of the voting members present decides a question. No less than 3 concurring votes is necessary for a decision. Less than 3 votes results in a failed motion. Two thirds of the voting members present are required to override a request to continue discussions or to override a decision of the Chair.

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