



TOWN OF LONDONDERRY

## **ZONING BOARD OF ADJUSTMENT**

268B Mammoth Road Londonderry, New Hampshire 03053 • Phone: 432-1100, ext.134 Fax: 432-1128

### **ZBA RULES OF PROCEDURE**

#### **AUTHORITY**

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the zoning ordinance and map of the town of Londonderry, New Hampshire.

#### **OFFICERS**

1. A chairman shall be elected annually by a majority vote of the board in the month of January. The chairman 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.
2. A vice-chairman shall be elected annually by a majority vote of the board in the month of January. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters which come before the board during the absence of the chairman.
3. A clerk shall be elected annually by a majority vote of the board in the month of January. The 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.
4. All officers shall serve for one year and shall be eligible for re-election.

#### **MEMBERS AND ALTERNATES**

1. Pursuant to RSA 673:3, the Zoning Board of Adjustment shall consist of 5 full members who are appointed in a manner prescribed by the local legislative body. Up to three alternate members shall be appointed, as provided for by the local legislative body, and 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. Alternate members shall participate in all meetings and deliberations of the board, including voting (their vote is non-binding, unless acting as a regular member).
2. Members must reside in the community 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 chairman as soon as possible. Members, including the chairman and all officers, shall participate in the decision making process and vote to approve or disapprove all motions under consideration.

## MEETINGS

1. **Regular meetings** shall be held in the Moose Hill Council Chambers (unless otherwise identified in the public notice), at 7:00 pm on the third Wednesday of each month. Other meetings may be held on call of the chairman provided public notice and notice to each member is given at least 24 hours, excluding Sundays and legal holidays, prior to such meetings.
2. **Quorum.** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.

[RSA 674:33, III](#) provides that "...the concurring vote of 3 members of the board shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal..." For this reason, the board will make every effort to ensure that a full five-member board is present for the consideration of any appeal. However, if less than five members are present, the option will be given to the applicant to hear their case the following month. It will be noted that, possibly, there still may not be five members the next month.

If any regular board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the chairman 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 more alternates than missing members, then they shall vote as regular members at the discretion of the chairman.

Non-voting alternate members will be announced at each meeting.

3. **Disqualification.** If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in [RSA 673:14](#), he shall notify the chairman 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 vote shall be advisory and non-binding.

The disqualification shall be announced by either the chairman 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. **Order of Business.** The order of business for regular meetings shall be as follows:
  - a. Call to order by the chairman
  - b. Introduction of members, and specifying those of a non-voting status
  - c. Approval of minutes from prior meeting
  - d. Report by the Town Council liaison
  - e. Public hearing of cases with closed deliberations following each one
  - f. Communications and miscellaneous
  - g. Other business

h. Adjournment

(Note: Although this is the usual order of business, the board may wish to make changes as necessary).

## APPLICATION/DECISION

### 1. Applications.

- a. Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the secretary of the board of adjustment who shall record the date of receipt over his or her signature.

Appeals from an administrative decision taken under [RSA 676:5](#) shall be filed within 30 days of the decision.

- b. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.

### 2. Public Notice.

- a. Public notice of public hearings on each application shall be given in a newspaper of general circulation in the area and shall be posted at the Town Hall and Library not less than two weeks 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 5 days before the date of the hearing. Notice shall also be given to the planning board, city/town clerk and 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.
- c. Costs of all required notices must be paid for, in advance, by the applicant.

### 3. Public Hearing. The conduct of public hearings shall be governed by the following rules:

- a. The chairman shall call the hearing in session and ask for the clerk's report on the first case.
- b. The clerk shall read the application and report any previous cases for the property in question.
- c. Members of the board may ask questions at any point during testimony.
- d. Each person who appears shall be required to state his name and address and indicate whether he 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 chairman, 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 chairman.

- g. The applicant shall be called to present his appeal.
  - h. Those appearing in favor of the appeal shall be allowed to speak.
  - i. Those in opposition or with questions to the appeal shall be allowed to speak.
  - j. The applicant and those in favor shall be allowed to speak in rebuttal.
  - k. Those in opposition to the appeal shall be allowed to speak in rebuttal.
  - l. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chairman not later than 5 business days prior to the public hearing.
  - m. 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.
  - n. The public hearing on the appeal shall be declared closed.
  - o. The Board will commence deliberations and will vote on a motion to grant or deny the request. (Deliberations may be continued if the Board wishes to seek further information on the matter).
  - p. The next case on the agenda will be read into the record.
  - q. The Board reserves the right to continue any case and/or deliberations should the meeting run past 10pm. Any case not heard will automatically be rescheduled to the first Thursday or the third Wednesday of the following month.
4. **Decisions.** The board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. Notice of the decision will be made available for public inspection not more than five business days after the meeting, as required by [RSA 676:3](#), and will be sent to the applicant by mail. If the appeal is denied, the notice shall include the reasons therefore.

All motions (for approval or denial) shall contain a finding (a specific reason) why the decision was reached.

Decisions will be based on motions made for the Board to vote on. Motion outlines for the different cases heard by the board are as follows:

- a. **Variance** – “I move that the Board [**approve / deny**] the variance request [**case number, applicant’s name, description of request**] because [**statement of finding**] [**subject to the following conditions**] [**statement of conditions**].”
- b. **Special Exception** -- “I move that the Board [**approve / deny**] the special exception request [**case number, applicant’s name, description of request**] because [**the applicant has met all the criteria (if for approval) or statement of finding (if for denial)**] [**subject to the following conditions**] [**statement of conditions**].”
- c. **Appeals of Administrative Decision** – “I move that the Board [**approve / deny**] the appeal of administrative decision [**case number, applicant’s name, description of request**] because [**statement of specific finding**].”
- d. **Equitable Waiver of Dimensional Requirements** -- “I move that the Board [**approve /**

**deny] the equitable waiver [case number, applicant’s name, description of request] because [the applicant has met all of the criteria (if for approval) or statement of finding (if for denial)].”**

## **RECORDS**

1. The records of the board shall be kept by the secretary of the board and made available for public inspection at Londonderry Town Hall offices in accordance with [RSA 673:17](#) and be made available to ZBA members 10 days prior to the scheduled hearing date by e-mail or otherwise. If a member desires to review any application and/or file prior to the hearing, the member may do so subject to the following conditions:
  - a. The member’s sole purpose in reviewing the application and/or file prior to the hearing is to familiarize the member with the location of the property and the general request of the applicant. This purpose will allow the member to ask better, more informed questions during the upcoming hearing; however, the member is precluded from conducting additional research which conflicts with the member’s statutory duties as outlined by New Hampshire Revised Statutes Annotated (NHRSA’s) and New Hampshire case law related to the application because the application must be decided on the basis of the evidence presented at the hearing.
  - b. The member cannot prejudge an application and must remain focused on the evidence presented at the hearing. While members frequently have some familiarity with a particular piece of property and/or applicant, that familiarity and a pre-hearing reading of the application is insufficient to make a determination on the application. The ZBA member must remain focused and impartial throughout the hearing.
  - c. The member must not discuss the application or related document with anyone, including other ZBA members. Pre-hearing discussions constitute “meetings” in violation of RSA 91-A, the Right to Know Law. Pre-hearing discussions are also perceived, rightly or wrongly, as a pre-hearing determination of the application. It is critically important for ZBA members not only to be fair and impartial, but also to appear fair and impartial.
2. Final written decisions will be placed on file and available for public inspection not more than five 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 public inspection not more than five business days after the meeting. [RSA 91-A:2 II](#).

## **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.

## **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.

## **JOINT MEETINGS AND HEARINGS**

1. [RSA 676:2](#) provides that the board of adjustment may hold joint meetings or hearings with other "land use boards," including the planning board, the historic district commission, the building code board of appeals, and the inspector of buildings, 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 chairman 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 meeting. If the other board is not the planning board, then the board of adjustment chair shall chair the joint meeting; 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.

**APPENDIX "A": AMENDMENTS**

<b><u>Date</u></b>	<b><u>Page No.</u></b>	<b><u>Subject</u></b>	<b><u>Amendment</u></b>
3/18/2009	p. 2	"Regular Meetings"	Amended location of meetings, from "at the Northgate Conference Room" to "in the Moose Hill Council Chambers (unless otherwise identified in the public notice)" by a vote of 5-0-0.
3/18/2009	p. 3	"Public Notice"	Amended "Derry News" to "in a newspaper of general circulation in the area" by a vote of 5-0-0.
3/18/2009	p. 5	"Records," #3	Amended "within 144 hours of the public meeting" to "not more than 5 business days after the meeting" (to reflect the change in RSA 91-A:2 II) by a vote of 5-0-0.
1/20/2010	p. 4	"Decisions"	Amended "within 144 hours" to "not more than 5 business days after the meeting" (to reflect the change in RSA 676:3, II) by a vote of 5-0-0.
1/20/2010	p. 5	"Records," #2	Amended "within 144 hours after the decision is made" to "not more than 5 business days after the decision is made" by a vote of (to reflect the change in RSA 676:3, II) by a vote of 5-0-0.
5/18/2016	p. 5	"Records, #1"	Amended "...and be made available to ZBA members 10 days prior to the scheduled hearing date by e-mail or otherwise. If a member desires to review any application and/or file prior to the hearing, the member may do so subject to the following conditions:  a. The member's sole purpose in reviewing the application and/or file prior to the hearing is to familiarize the member with the location of the property and the general request of the applicant. This purpose will allow the member to ask better, more informed questions during the upcoming hearing; however, the member is precluded from conducting additional research which conflicts with the member's statutory duties as outlined by New Hampshire Revised Statutes Annotated (NHRSA's) and New Hampshire case law related to the application because the application must be decided on the basis of the evidence presented at the hearing.  b. The member cannot prejudge an application and must remain focused on the evidence presented at the hearing. While members frequently have some familiarity with a particular piece of property and/or applicant, that

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11/16/2016 p.1 “Members and Alternates, #1” Amended to insert in front of paragraph 1 “Members and Alternates the following sentence: “Pursuant to RSA 673:3, the Zoning Board of Adjustment shall consist of 5 full members who are appointed in a manner prescribed by the local legislative body.”

p.3 “Application/Decision, #2a” Amended to remove from Application/Decision section 2.a “Londonderry Post Office”