

# Zoning Board of Adjustment Durham, New Hampshire

## RULES OF PROCEDURE

### A. AUTHORITY

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 Durham, New Hampshire.

### B. OFFICERS

1. A Chairperson shall be elected annually by a majority vote of the Board in the month of May. He/she shall preside over all meetings and public hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

2. A Vice-Chairperson shall be elected annually by a majority vote of the Board in the month of May. 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. A Secretary shall be elected annually by a majority vote of the board in the month of May. He/she shall verify and review the records that the Town's Zoning Department maintains.

4. All officers shall serve for one year and shall be eligible for re-election. Officers shall be regular Board members.

5. Up to 3 alternate members may be appointed, as provided for by the local legislative body pursuant to RSA 673:6, to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities. Alternates are encouraged to attend all board meetings and would be permitted to participate in discussions and vote only when designated by the Chair person to fill the vacancy of an absent or disqualified regular Board member.

### C. MEETINGS

1. Regular meetings shall be held at 7:00 p.m. in the Town Council Chambers, Durham Town Offices, on the second Tuesday of each month. Other meetings may be held on call of the Chairperson provided public notice and notice to each member is given at least 48 hours, excluding Sundays and legal holidays, prior to such meeting.

2. Quorum. A quorum for all meetings of the Board shall be 3 members, including alternates sitting in place of members.

3. The Zoning Administrator/CEO shall act as advisor to the Zoning Board of Adjustment.

4. Recusal. If any Board member finds it necessary to recuse himself from hearing a particular application, as provided in NH RSA 673:14, he/she shall notify the Chairperson as soon as possible so that an alternate may be requested to sit in his/her place. The recusal shall be announced by either the Chairperson or the recused member before the beginning of the public hearing on the application. The recused member shall leave the table during the public hearing and during all deliberation on the application. Recused members may make statements during the public hearing, on the same basis as other citizens.

5. Order of Business. The order of business for regular meetings shall be as follows:

- a. Introduction of Board members by the Chair
- b. Public hearings
- c. Approval of Minutes from previous meeting(s)
- d. New business
- e. Old business, communications and miscellaneous
- g. Adjournment

*(Note: Although this is the usual order of business, the Board may wish to hold public hearings immediately after the introduction in order to accommodate the public.)*

6. Attendance. The unexcused absence of a member from three (3) consecutive meetings or six (6) meetings in a twelve (12) month period shall constitute grounds for removal by the appointing authority (Town Council).

7. Non-public Sessions. All deliberations on applications shall be held in public. Non-public sessions may be held in accordance with the provisions of NH RSA 91-A.

## **D. APPLICATIONS/DECISIONS**

1. Applications.

- a. All applications for hearings before the Board shall be made on forms provided by the Town and shall be submitted to the office not less than twenty (20) calendar days prior to the scheduled meeting date. Submissions which fail to meet this requirement shall not be considered until the next regular meeting.
- b. An Appeal from an Administrative Decision taken under NH RSA 676:5 shall be filed within thirty (30) days of the decision.
- c. A public hearing shall be held within 45 days of the receipt of any application in accordance with RSA 676:7, II.
- d. All variance applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance. In addition all applications must be accompanied by adequate plans and exhibits in accordance with the terms of the Zoning Ordinance. Minimum

requirements for adequate plans shall include the following (plans need not be engineered plans):

- Lot dimension
- Abutting street(s)
- Scale
- Yard dimensions
- Arrow indicating North direction
- Dimensions of proposed and existing structures
- Dimensions of parking spaces
- Title of Petition (i.e., Variance, Special Exception)
- Name of petitioner

e. Any applicant who submits an application, plans and exhibits that are deemed inadequate by the Board shall have the application tabled until such time as adequate documents are received by the Board.

f. Public hearings shall not be scheduled, advertised or held until such time as the submitted application is in full compliance with Board requirements.

## 2. Public Notice.

a. Public notice of public hearings on each application shall be given in the local newspaper and shall be posted at the Durham Town Hall not less than five (5) days before the date fixed for the 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 to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the Planning Board, municipal 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.

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

a. The Chairperson shall announce that the public hearing is in session.

b. The Secretary or a member designated by the Chairperson shall read the public hearing notice and the letter of intent.

c. At the discretion of the Chairperson, members of the Board may ask questions at the hearing/meeting.

- d. Each person who wishes to be heard shall state his name and address and indicate whether he or she is a party to the application, an agent or counsel to a party to the application.
- e. Any member of the Board, through the Chairperson, may request any party to speak a second time.
- f. Any party to the application who wants to ask a question of another party to the application must do so through the Chairperson, but only at the discretion of the Chairperson.
- g. The applicant shall be called to present his case and then the Chairperson will ask others present who are in favor of the application to speak.
- h. The Chairperson will next recognize those in attendance who wish to speak against the application.
- i. The applicant shall be allowed to speak in rebuttal to those in opposition to the application.
- j. The Chairperson may place reasonable time limits on all speakers.
- k. The Board may vote to continue a public hearing to a later date. Continuation of a public hearing will require the Board to announce the place and date of the next meeting at the end of the first meeting; no additional legal notices will be necessary.
- l. The Chairperson shall request a motion to close the public hearing when there is no further input either for or against the application. Once closed, no further input from the public will be allowed from the applicant or any other parties unless specifically requested by the Board.
- m. One person shall be appointed to keep track of voting and decisions at each hearing.

5. Decisions. The Board shall make a decision in a timely manner consistent with NH RSA 676:3 and notify the applicant or their legal representative. The Board may either approve, approve with conditions, disapprove, or ask for a continuance if necessary. The Board will review all statutory criteria before granting any approval, and specifically state the reason for any denial.

## **E. RECORDS**

The records of the Zoning Board shall be kept by the Staff of the Zoning and Code Enforcement department and made available for public inspection in accordance with statutory requirements.

1. Final written decisions will be placed on file and available for public inspection per NH RSA 676:3.

2. 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 per NH RSA 91-A:2 II.

## **F. 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 the meeting immediately preceding the meeting at which a vote is to be taken.

## **G. JOINT MEETINGS**

1. NH RSA 676:2 provides that the Zoning Board of Adjustment may hold joint meetings or hearings with other "land use boards", including but not limited to the Planning Board or the Historic District Commission, and each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

2. Joint meetings with any other land use board may be held at any time when called jointly by the Chairperson of the two boards.

3. A public hearing on any appeal to the Zoning 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.

b. If the other board is the Planning Board, NH RSA 676:2 requires that the Planning Board Chairperson shall chair the joint hearing. If the other board is not the Planning Board, then the Zoning Board of Adjustment Chairperson shall chair the joint hearing.

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.

d. The other board shall concur in these conditions.

## **H. MISCELLANEOUS**

1. In those cases presented to the Zoning Board of Adjustment which have been previously presented to the Planning Board or an administrative officer, such body or officer will

be requested to furnish the Zoning Board of Adjustment with all exhibits, records and history of the case.

2. Petitions may only be withdrawn by the petitioner, prior to the public hearing of said petition, unless voted otherwise by the Board. If withdrawn, the petitioner will be allowed thirty (30) days to resubmit the petition and pay for reasonable costs (copying, legal, and postage, etc.). The petition must be exactly as originally submitted. If the petitioner does not resubmit within thirty (30) days, the petition will then be considered a new petition and costs will be the same as if the petition were being submitted for the first time.

3. Correspondence.

a. All correspondence shall be directed to the Chairperson of the Zoning Board of Adjustment, Town Office, 8 Newmarket Road, Durham, New Hampshire 03824.

b. All documents or communications from the Board shall be signed by the Chairperson of the Board (or his/her authorized representative).

c. In the absence of the Chairperson, for any reason, the elected Vice-Chairperson shall act in his/her place.

d. All press and radio releases shall be made as they are recorded within the minutes of the Board meeting and/or from the official records. No single Board member shall be allowed to issue press releases.

4. Annual Report. An annual report shall be prepared by the Chairperson and submitted to the Town Administrator in November for inclusion in the annual Town Report document.

APPROVED AT THE MEETING OF DECEMBER 10, 1996 AND AMENDED AT THE MEETINGS OF FEBRUARY 13, 2001, APRIL 8, 2008, JULY 14, 2009, SEPTEMBER 11, 2018, SEPTEMBER 10, 2019 and December 10, 2019.

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Chris Sterndale, Chairperson