

TOWN OF CHESTER ZONING BOARD OF ADJUSTMENT

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 Chester.

OFFICERS

1. A Chair shall be elected annually by a majority vote of the board in the month of May/June. The chair 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-Chair shall be elected annually by a majority vote of the board in the month of May/June. 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.

3. An Administrative Assistant shall be hired by the board. The Administrative Assistant 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. **Five members** shall be appointed by the Board of Selectmen, members must reside in the community, be 18 years of age or over, and US residents. Members 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 Chair and/or the ZBA office as soon as possible. One member may be appointed for one year by the Planning Board to serve as a Representative in the capacity of regular member or alternate.

2. Up to **five alternate members** shall be appointed by the Board of Selectmen and should attend all meetings to familiarize themselves with the workings of the board and to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

3. The term of board members and alternates is three years. Terms shall be staggered so that no more than two appointments occur annually. Appointments made to fill vacancies on the board will be for the remainder of the term(s) vacated. Members must reside in the community and are expected to attend each meeting of the board to exercise duties and responsibilities. Members, including the chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

4. At meetings of the ZBA, 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 un-expired 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, ask questions 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.** Upon the close of the public hearing, any alternate not acting in place of another member shall remove themselves from the table and sit with other members of the public. During work sessions or portions of meetings that do not

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include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application. Liaison appointed by the Board of Selectmen to the Zoning Board of Adjustment are non-voting representatives.

MEETINGS

1. **Regular meetings/hearings** shall be held at the Town Offices, 84 Chester Street at 7:00 p.m. on the third Tuesday of each month. Other meetings may be held on the call of the chair or requested by at least three members of the board, provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.

2. **Quorum.** A quorum for all meetings of the board shall be three members in person, including alternates sitting in place of members.

- a. The chair will make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.
- b. If any regular board member is absent from any meeting or hearing or disqualifies himself/herself from sitting on a particular case, 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.
- c. If there are less than five members (including alternates) present, the Chair shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present that shall not solely constitute grounds for a rehearing should the application fail.

3. **Disqualification.** If any member finds it necessary to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the Chair 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.

Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself/herself 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 Chair
- b. Roll call by the Chair
- c. Action on the minutes
- d. Correspondence
- e. Unfinished business
- f. New business
- g. Public hearing(s)
- h. Other business
- i. Adjournment

RULES OF PROCEDURE CONTINUED

APPLICATION/DECISION

1. Applications.

- a. Each application for a hearing before the board shall be made on forms provided by the board and emailed to nhoijer@chesternh.org or mailed to PO Box 340, Chester, NH before Noon of the posted deadline. All applicable fees must be paid in full before the posted deadline. Once the completed application form and denial letter from the Building Inspector has been received the Administrative Assistant will assist applicants with questions, filing fee amounts, manners of payment, abutter's lists and helping the applicant prepare mailing labels for notice. Applicants and abutters/interested parties should not contact members of the Board outside of the public hearing.
- b. Appeals from an administrative decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision.
- c. The Administrative Assistant shall present to the board all applications received at least 5 days before the date of the meeting.

2. **Forms.** All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these Rules of Procedure.

3. Public Notice.

- a. Public notice of public hearings on each application shall be given in the Tri Town News or the Union Leader and shall be posted at the Chester Town Offices and Post Office not less than five days (5) before the date fixed for the hearing. Notice shall include the name of the applicant and/or agent, 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, return receipt requested to the applicant and/or agent and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the town clerk, building inspector/code enforcement officer, planning board and other parties deemed to have special interest.
- c. The applicant shall pay for all the required notice costs at the time of application submittal in accordance with posted deadlines.
- d. The appellant requesting a rehearing shall pay for all the required notice costs at the time the request for a rehearing submittal in accordance with deadlines defined in NH RSA 677 as may be from time to time amended.

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

- a. The Chair shall call the hearing in session.
- b. The Vice-Chair shall ask for the public hearing notice to be read out loud which includes the Administrative Assistant's report on how public and abutters notice was given.
- c. The Chair shall provide a summary of, but not be required to read in its entirety any written correspondence or emails the board has received from parties of interest to the matter, provided they include information required in section e below, which does not include discussions with the board's legal counsel. Said correspondence shall have been received by the board during normal business hours prior to the commencement of the public hearing.
- d. The applicant or agent shall be called to present its appeal.
- e. Members of the board may ask questions at any point during the testimony but should be encouraged to wait until after the applicant has presented his appeal.

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- f. After the applicant has presented its appeal the Chair shall open the hearing to the public for comments and questions.
- g. If the applicant is not present and does not present his appeal or request a continuance the Chair shall proceed to deliberations.
- h. If the applicant or agent does not appear, without just cause, may result in the application being dismissed without further hearing.
- i. Each person who appears shall be required to state his/her name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case and the manner in which the matter affects their personal property rights.
- j. Any member of the board, through the Chair, may request any party to the case to speak a second time.
- k. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
- l. Persons who are out of order may be asked by the Chair to leave the hearing room.
- m. Those appearing in favor of the appeal shall be allowed to speak.
- n. Those in opposition to the appeal shall be allowed to speak.
- o. The applicant and those in favor shall be allowed to speak in rebuttal.
- p. If the applicant is not present to make a rebuttal to those comments made by parties in opposition to the appeal, the hearing will be continued to enable the applicant to make a rebuttal.
- q. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chair not later than 3 days prior to the public hearing.
- r. 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.
- s. The board of adjustment, applicant and its attorney will be provided with copies of any written or documented evidence submitted to the board for consideration.
- t. Any verbal testimony which is considered third-party, hearsay or read into the record during the public hearing will be dismissible as evidence if not copied to the applicant or their attorney or able to be verified prior to the board entering deliberations.
- u. The Chair shall present a summary setting for the facts of the case and the claims made for each side. Opportunity shall be given for correction *limited to the facts and not opinions* from the floor and allow for rebuttal by the applicant without being construed as to have reopened the public hearing for additional comments and questions unrelated to the Chair's summary of its findings of fact.
- v. The board will enter deliberations.
- w. No person will be heard when the board enters deliberations.**
- x. The hearing on the appeal shall be declared closed and the next case called up.
- y. It is assumed without the need of the Board to state otherwise, that the public hearing portion of the meeting is closed when the Board enters deliberations.
- z. Once the public hearing on the matter is closed the board is in public meeting (the public hearing portion of the public meeting has been concluded). Parties may not continue discussions with, direct comments to, or ask further questions on the matter with the board, outside of their right to submit those comments or requests for appeal to the board through its office during posted business hours.

5. **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

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made available for public inspection within 5 business days as required by RSA 676:3, and will be sent to the applicant by certified mail. If the appeal is denied, the notice shall include the reasons, therefore. The notice shall also be given to the planning board, building inspector/code enforcement officer, the board of selectmen, town clerk, property tax assessor and other town officials as determined by the board. Granted decisions shall be posted at Town Hall for 30 days and decisions of denial shall be posted for 5 days. Granted conditional decisions will be recorded with the Rockingham County Registry of Deeds. Administrative Assistant shall have authority to sign decisions.

6. **Voting.** The Chair may assign the task of drafting a motion to a board member who shall bring a draft motion to the board at the continuation of the deliberative portion of the meeting for the consideration of the board. **Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The board must put forth a new motion to affirmatively set forth a decision.**

7. **Reconsideration by the Board.** The board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of thirty (30) days beginning with the date following the date of the board vote (see 74 Cox Street LLC v. City of Nashua, September 21, 2007). Motions for Rehearing can only be received in the office of the board during normal business hours. (See Cardinal Development v. Winchester, October 2008.)

8. **Motion for Rehearing.** If the board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7 (October 2012).

RECORDS

1. The records of the board shall be kept by the Administrative Assistant and made available for public inspection at the Zoning Board of Adjustment office in Town Hall in accordance with RSA 673:17.

2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made (see 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 within 5 business days of the public meeting (see RSA 91-A:2 II.).

4. The proceedings are not tape recorded for the purpose of preparing minutes. Proceedings will be broadcasted live via the Town's Public Access Television host whenever possible.

AMENDMENTS

These rules of procedure may be amended by a majority vote of the members of the board provided that such new rule 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.

RULES OF PROCEDURE CONTINUED

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 chairman shall chair the joint hearing. If the other board is not the planning board, then the board of adjustment chairman shall chair the joint hearing; 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.

LEGAL

1. The Chair and Vice-Chair will be the designated persons as primary points of contact with Counsel. All inquiries shall be made in writing and given to the Administrative Assistant to be forwarded to Counsel. Counsel's response will be in writing and provided to all members of the Board. The Chair may, at times, contact Counsel directly. Counsel's response will be forwarded to all Board members.

FINANCIAL

1. The Administrative Assistant has the authority to approve for payment all telephone, office equipment and maintenance, office supplies, postage, mileage, recording fees, books/periodicals, dues/subscriptions/seminars, and public notice advertising. Legal Bills and Time Sheets are to be approved by the Chair, or Vice-Chair in the event of the Chair's absence at the monthly meeting.

ASSESSMENT-FEES

RSA 676:5, IV and V(a),(b) provides that the board of adjustment can impose reasonable fees and require an applicant to cover the boards administrative expenses and costs of special investigative studies, the review of documents and other matters which may be required by particular appeals or applications.

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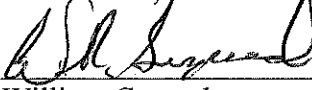
These rules of procedure have been adopted on this day Tuesday the 21ST of June in the year of 2022 by the Town of Chester Zoning Board of Adjustment.


Billie Maloney, Chair


Jack Cannon


Rick Snyder


Kevin Scott, Vice Chair


William Gregsak

Jason Walsh, Alternate

REV 6-20-22

