



ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE

Article I. Name

The name of the board is the Dover Zoning Board of Adjustment.

Article II. Authority and Duties

- A. These Rules of Procedure are adopted under the authority of New Hampshire RSA 676:1 and Chapter 5 (Boards, Commission, and Committees) and Chapter 170 (Zoning Ordinance) of the Code of the City of Dover, New Hampshire.
- B. The Zoning Board of Adjustment shall have duties and responsibilities pursuant to RSA Chapters 672-677. The members shall also perform the duties of a Building Code Board of Appeals pursuant to RSA 674:34.

Article III. Membership

- A. **Membership.** The Zoning Board of Adjustment shall consist of five (5) members and up to three (3) alternates, appointed by the City Council, in a manner prescribed by the Council, pursuant to RSA 673:3 and 673:6.
- B. **Terms of Membership.** Members shall be appointed to terms of three (3) years pursuant to RSA 673:5.
- C. **Alternates.** Alternates should attend all meetings to familiarize themselves with the workings of the Board so that they are ready to serve whenever a regular member is unable to fulfill his or her responsibilities. Alternate members shall substitute for regular members on any case when a regular member is absent or disqualified pursuant to RSA 673:14 and the Chair designates them to do so. See also Article III, paragraph E, and Article V, paragraph C.2.

On all other matters before the Board including but not limited to approval of meeting minutes, election of officers, and amendments to and/or the adoption of these Rules of Procedure, alternate members shall be permitted to deliberate and vote on such matters together with the regular members. This shall not, however, have any impact on the

ability of the Board to establish a quorum pursuant to Article V, Section C.1 below.

- D. Members must reside in Dover, New Hampshire and are expected to attend each meeting of the Board to fulfill their duties and responsibilities. Any member unable to attend a meeting shall notify the Chair or Clerk as soon as possible.
- E. Voting members shall be announced by the Chair prior to the consideration of the agenda item. Alternate members who are not voting may fully participate during the presentation of applications and the public hearing. Once the Board moves into deliberations, alternates may no longer participate.
- F. **Attendance, Vacancies and Removal.** All appointments to the Board shall serve for the terms appointed and until a successor shall have been appointed and qualified. Members who fail to attend four (4) meetings out of any twelve (12) consecutive meetings held without due cause may be recommended by the Board for replacement by the City Council. Such failure to attend shall be deemed sufficient cause for the City Council to remove the member pursuant to RSA 673:13. Appointments made to fill any vacancies shall be for full terms to begin the date of appointment by the appointing authority unless otherwise provided in state statute.

Article IV. Officers and Staffing

- A. A **Chair** shall be elected at the first regular meeting of the Board each new calendar year by a majority vote of the members of the Board in attendance. The Chair shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall sign documents on behalf of the Board.
- B. A **Vice-Chair** shall be elected at the first regular meeting of the Board each new calendar year by a majority vote of the members of the Board in attendance. The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters that come before the Board during the absence of the Chair.
- C. If the Chair and the Vice-Chair are not present, or cannot sit on a case due to a conflict of interest, then the Board shall elect a temporary Chair from its members for that particular case or meeting.
- D. The **Clerk** shall be the staff person designated by the Director of Planning and Community Development. If the City does not provide a staff person to perform the duties of the Clerk, then the Board may elect a temporary Clerk by majority vote of the members of the Board in attendance at the first regular meeting of the Board each new calendar year who shall serve as Clerk until approval and funding can be obtained to hire a dedicated Clerk as an employee of the City pursuant to RSA 673:16, I. The Clerk shall maintain a record of all meetings, transactions, and findings of the Board, as approved by the Board.
- E. All officers shall serve a term that expires at the first regular meeting of the Board each

new calendar year and shall be eligible for re-election.

Article V. Procedures

A. Site Visits.

1. Members may make site visits before the public meeting, if authorized by the Applicant. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board.
2. At no time shall more than two (2) members of the Board be present simultaneously during a site visit unless the site visit has been called as a public meeting and proper public notice as required by New Hampshire statutes has been given. Other than observations of the site, no evidence shall be taken; and there will be no discussions of the evidence or deliberations at such site visits.

B. Meetings.

1. Regular meetings shall be held at a municipal building at 7:00 p.m. on the third Thursday of the month. Other meetings may be held on call of the Chair. All meetings shall comply with the public notice provisions of RSA 91-A:2, II.
2. A maximum of six (6) Applicant related items, which includes the combination of new applications and old business, shall be placed on the agenda for each monthly meeting, unless the Chair approves additional items. If no applications have been submitted to the Planning Department and there is no other business, the regularly scheduled monthly meeting may be canceled by the Chair.
3. The order of business for regular meetings of the Board shall be as follows:
 - a. Call to order by the Chair
 - b. Board and Staff Introductions by the Chair
 - c. Approval of minutes from the previous meeting
 - d. Changes to the Agenda/Special Announcements
 - e. Old Business
 - f. New Business – Disposition of new applications under consideration
 - g. Other Board Business
 - h. Adjournment
4. Nonpublic meetings. If required, the Board may conduct nonpublic meetings pursuant to the laws of the State of New Hampshire. The Chair shall conduct nonpublic meetings utilizing the Checklist prepared by General Legal Counsel for nonpublic meetings.

- B. Appeals.** Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of

the decision. Any appeal made after this deadline will not be considered timely.

C. Quorum and Alternates.

1. A quorum for all meetings of the Board shall be three (3) regular members, which includes alternates sitting in place of regular members, as designated by the Chair on a case by case basis before the public hearing.
2. If any regular Board member is absent from any meeting or hearing, or disqualifies himself 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. The Chair shall use his or her reasonable discretion in choosing alternates, but shall endeavor to do so on a rotating basis, where possible and appropriate.
3. If there are less than five (5) 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 (5) members present that shall not constitute grounds for a rehearing should the application fail.

D. Parliamentary Authority. All Meetings are conducted in accordance with Robert's Rules of Order, Eleventh Edition or later edition.

E. Minutes. Minutes shall be kept for all meetings of the Board. The minutes shall be kept in accordance with RSA 91-A and shall include the names of the members in attendance, persons appearing before the Board, all actions and motions coming before the Board including the votes of the members, and a general summary of all discussions. Draft minutes shall be provided to the City Clerk in accordance with RSA 91-A; minutes of public meetings shall be provided within five (5) business days of each meeting, and minutes of non-public meetings that have not been sealed pursuant to RSA 91-A:3 shall be provided within seventy-two (72) hours, for posting on the City website in draft form. Draft minutes shall be clearly marked "DRAFT". Draft minutes, with or without revisions, shall be approved by the Board at the next meeting of the Board or as soon as possible. Final approved minutes shall be provided to the City Clerk for posting on the City website.

F. Recording of Meetings. Recording of meetings shall be in accordance with Chapter 5 of the Dover Code ("Board, Commissions and Committees"), Section 5-1.M.

G. E-mail accounts. Board members may obtain a City of Dover e-mail address or use their own account to facilitate communications regarding meetings, agendas and the dissemination of information. Board members shall refrain from using e-mail to discuss the substance of any issue before or expected to be before the Board. Members shall not use email with other members where the e-mail discussion directly or indirectly involves a quorum of the Board. It is recommended that Board Members refrain from using the "reply all" feature of the email. In addition Board members shall refrain from conducting the official business of the Board outside the view of the

public and the press unless permitted by state law.

H. **Member Disqualification**

1. If any member finds it necessary to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, the member shall notify the Chair as soon as possible so that the Chair can designate an alternate to sit in the disqualified member's 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 make a non-binding vote on the question of disqualification; only the member can disqualify himself or herself. Any such request shall be made before the beginning of the public hearing. The Board's vote shall be advisory and non-binding.
2. Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. A disqualified member shall not sit with the Board during the public hearing and during all deliberations on the case.

I. **Applications**

1. **Applications.** Each application for a hearing shall be made on forms approved by the Board and provided by the Planning Department to the Applicant. At each meeting of the Board, the Clerk shall provide the Board with all applications received by the Planning Department which have been received no less than twenty-one (21) days before the date of the hearing.

All application forms for the Zoning Board of Adjustment, and any revisions thereto, shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.

2. **Fees.** Pursuant to RSA 673:16,II, all expenses incurred by the Board in connection with any Application shall be borne solely by the Applicant, including but not limited to fees and any expenses incurred for consultant services or investigative studies (as authorized by RSA 676:5,IV), unless otherwise waived by the Board for reason of special circumstance upon written request of an Applicant.
3. **Public Notice.** Public notice of hearings on each application shall be given in the Foster's Daily Democrat and shall be posted in two (2) public places not less than ten (10) days before the date of the hearing. Notice shall include the Applicant's name, description of the subject property, action desired by the Applicant, provisions of the zoning ordinance concerned, the type of relief being sought and the date, time and place of the hearing. Personal notice of the hearing shall be made by certified mail to the Applicant and all abutters not less than ten (10) days before the date of the hearing. Notice shall also be given to the Planning Board,

City Clerk and other parties deemed by the Board to have special interest in the application. The Applicant shall pay in advance for the cost of all required notice.

The Applicant must post near the front lot line of their property in clear view from the Street, the poster provided to them by the Planning Department. The poster must be posted no later than five (5) days before the hearing at which their application will be presented. If the poster is not posted, the Board may deem that as cause to disqualify the application.

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

1. The Chair shall open the public hearing by reading the public notice referring to the application.
2. Members of the Board may ask questions at any point during testimony after recognition from the Chair.
3. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
4. Everyone who speaks and is not a member of the Board or an advisor to the Board, shall be required to state his or her name and address and indicate whether he or she is a party to the case, an abutter or an agent or counsel to a party or an abutter.
5. The Applicant (or the Applicant's counsel or agent) shall be called by the Chair to present the application to the Board. Thereafter, those (or their counsel or agent) in favor of the application shall be allowed to speak. Once those in attendance in favor of the application have spoken, the Board shall hear those (or their counsel or agent) in opposition to the application. After those in opposition to the application have spoken, the Applicant (or the Applicant's counsel or agent) shall be allowed to speak in rebuttal. Once they have spoken in rebuttal, those in opposition (or their counsel or agent) shall be allowed to speak in final rebuttal. Upon completion of the final rebuttal, questioning by the Board Members and presentation by the staff of the City's comments, if any, the public hearing shall be declared closed; and the Board shall deliberate on the application or defer action on the application to a later date and schedule a date for continuance. After close of the public hearing no further comment from Applicant, abutter, or any other member of the public shall be taken.
6. Any person who speaks at a public hearing, other than the Applicant or an abutter, should clearly demonstrate and explain to the Board how he or she is affected directly by the proposal under consideration.
7. Any person who wants the Board to compel the attendance of a witness shall present his or her request in writing to the Chair not later than three (3) days prior to the public hearing.

K. Decisions. Decisions of the Board shall be governed by the following rules:

1. Any decision made by the Board that is in favor of the Applicant shall require three (3) votes, including the approval of any conditions.
2. The application shall be approved or denied based upon a majority vote by the members of the Board hearing the application. In the event an application is heard by only three (3) members, an affirmative vote shall require all three (3) votes.
3. The Board shall decide all cases within 31 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal.
4. All decisions shall be documented on a form that is approved by the ZBA. If the appeal is denied, the notice shall include the reasons therefore.
5. The Board has the authority to attach reasonable conditions in the granting of any relief. These reasons include, but are not limited to, those necessary to preserve the spirit of the Ordinance. The placing of conditions may also be designed to protect the adjacent landowners, preserve the essential character of neighborhoods, secure the basic values of the master plan, and attempt to provide that substantial justice is done. However, the condition or conditions must be related to the use of the land and not to the personal circumstances of the Applicant. Reasonable conditions shall also include the authority to make the decision conditional on placing on deposit with the City, in the manner provided by RSA 673:16 (II), sums of money to ensure compliance with such conditions. The conditions must be adhered to otherwise the granting of the appeal will be revoked. If the Board finds it necessary to attach conditions they must be spelled out in detail in the Board's decision. Pursuant to RSA 676:15 and 676:17 the Board may seek Injunctive Relief, a Fine, or both for the violation of a condition.
6. Notification of the decision shall be sent to the Applicant, shall be filed in the records of the Board, and shall be available to the public within five (5) business days.

L. Voting: The Chair may assign the task of making a motion to any Board member, or such motion may be made by any voting member. Should a motion result in a tie vote or not receive the necessary three (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.

M. 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 the original decision as per *74 Cox Street, LLC v. City of Nashua*, 156 N.H. 228 (N.H. 2007). Motions for Rehearing can only be received at the Planning Department during normal business hours. *See Cardinal Development v. Winchester*, 157 N.H. 710 (N.H. 2008).

- N. Motions for Rehearing:** If the Board grants a motion for rehearing, a new public hearing shall be held within thirty (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.

Article VI. Joint Meetings and Hearings

- A.** RSA 676:2 provides that the Board may hold joint meetings or hearings with other “land use boards”, including the Planning Board, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
- B.** Joint meetings with any other land use board may be held at any time when called jointly by the Chairs of the two Boards.
- C.** A public hearing on any application before the Board of Adjustment will be held jointly with another board only under the following conditions:
1. The joint public hearing must be a formal public hearing on applications to both boards regarding the same subject matter; and
 2. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and
 3. 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
 4. The other board shall concur in these conditions.

Article VII. Amendment of Rules.

These Rules of Procedure may be amended by a majority vote of the members provided that such amendment is presented at the meeting immediately preceding the meeting at which the vote is to be taken.