

Rules of Procedure for the Zoning Board of Adjustment Town of Hillsborough NH

RULES OF PROCEDURE

ARTICLE I

Authority

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, [Chapter 676:1 including Chapter 676 et. Seq.](#), and the Zoning Ordinance and map of the town of Hillsborough

Organizational Meeting

ARTICLE II

The first Zoning Board of Adjustment meeting after Town Meeting shall serve as an organizational meeting at which all officers shall be elected or re-elected. All current Officers shall remain in their current positions until elections have taken place.

Officers

ARTICLE III

- 3.1 A Chairperson shall be elected annually by a majority vote of the Board at the first meeting following Town Meeting. The chairperson shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix their signature in the name of the Board on all Notices of Decision.
- 3.2 A Vice-Chairperson shall be elected annually by a majority vote of the Board at the first meeting following Town Meeting. 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.
- 3.3 All officers shall serve for one year and shall be eligible for re-election.

Regular Members and Alternates

ARTICLE IV

- 4.1 **Regular Members** The Board shall consist of five members, who shall be elected by the Town per RSA 673:2, II (b), and shall be termed "regular members". Members of the Board shall conform to the limitations on multiple membership set forth in RSA 673:7.

- 4.2 Alternates** Up to five alternate members may 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 their responsibilities.
- 4.3** At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member may participate with the board in a limited capacity.
- a. Only regular members, activated alternates, and staff shall sit at the table.
 - b. An alternate who has been activated to fill the seat of an absent or recused member, becomes a full voting member and is expected to participate in all aspects of the public hearing.
 - c. Un-activated alternates shall sit with the public and may participate during the “public comment” portion of the public hearing.
 - d. Un-activated alternates shall not participate with the Board during deliberations.
 - e. During work sessions or portions of meetings that do not include a public hearing, all alternates may sit at the table and fully participate, exclusive of any motions or votes that may be made. At all times, the Chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting. - [October 2012]
- 4.4 Vacancies** Vacancies in the membership of the Board, occurring other than through the expiration of a term of office, will be filled as follows (RSA 673:12):
- a. For a regular member, through appointment by the remaining Board members until the next regular town election, at which time a successor will be elected either to fill the unexpired term or to begin a new term, as appropriate.
 - b. For an alternate member, through appointment by the Board for the unexpired term.

In the case of a vacancy for a regular or alternate member, the position shall be posted on the Town website for a minimum of two weeks so that potential candidates may express their interest in serving on the Board. The candidate will submit a letter of interest, including their qualifications, to the Planning Director who will forward it on to the Board for consideration. The candidate will be invited to the next regularly scheduled meeting for an interview, which shall be included on the agenda.

- 4.5 Members must reside in the Town 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 Planning Director or Chairperson as soon as possible in advance. If a member fails to attend 3 meetings in any 12 month period without giving prior notice to the Planning Director or Chairperson, the Member shall be deemed to have vacated their position on the Board.

Members, including the Chairperson, members and activated alternates shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

Meetings

ARTICLE V

- 5.1 **Regular meetings** shall be held at 27 School Street, at 7:00 pm on the second Monday of each month. Other meetings may be held on the call of the Chairperson provided public notice and notice to each member is given in accordance with [RSA 91-A:2, II](#). If there is no business before the Board, the meeting may be cancelled per the discretion of the Chairperson.
- 5.2 **Building Capacity-** Should the total number of building occupants at a meeting exceed the Town Office occupancy limit of 30 people, the Chairperson will attempt to re-locate the meeting to another venue that night or, if another venue is not available, continue the public hearing to another date and time certain when a larger venue may be available.
- 5.3 **Quorum:** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
- The Chairperson shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.
 - If any regular board member is absent from any meeting or hearing or disqualifies themselves from sitting on a particular case, the Chairperson 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.
 - Alternates shall be activated on a rotating basis from those present at a particular meeting.
 - If there are less than five members (including alternates) present, the Chairperson shall give the option to the applicant to proceed or not. 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. (If a ZBA applicant elects to have a board of four consider an application and the vote is 2 in favor and 2 opposed, the application is deemed denied.)

- 5.4 Disqualification:** If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in [RSA 673:14](#), they shall notify the Chairperson as soon as possible so that an alternate may be requested to sit in their 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 Chairperson or the member disqualifying themselves before the beginning of the public hearing on the case shall announce their disqualification. The disqualified member shall absent themselves from the board table during the public hearing and during all deliberation on the case

To assist a member in determining whether or not they should step down (recuse themselves) board members should review the questions which are asked of potential jurors to determine qualification (RSA 500-A:12). A potential juror maybe asked whether they:

- a. Expect to gain or lose upon the disposition of the case.
- b. Are related to either party.
- c. Have advised or assisted either party.
- d. Have directly or indirectly given an opinion or formed an opinion.
- e. Are employed by, or employs any party in the case.
- f. Is prejudiced to any degree regarding the case; or employs any of the counsel appearing in the case in any action then pending in the court.

Either the Chairperson or the member disqualifying themselves before the beginning of the public hearing on the case shall announce their disqualification. The disqualified member shall remove themselves from the table and seat themselves with the public or exit the meeting room during the public hearing during all deliberation on the case.

- 5.5 Audio Recordings:** The purpose of recording meetings is to assist in the preparation of meeting minutes. All audio recordings shall be destroyed upon the approval of the official meeting minutes per RSA 33-A:3-a, LXXX Disposition and Retention Schedule, unless an applicant or abutter requests retention of a recording within 72 hours of their hearing; and then such recording shall be retained for the duration of any appeal concerning said hearing.

5.6 Order of Business

The order of business for regular meetings may be as follows:

- a. Call to order by the Chairperson.
- b. The Pledge of Allegiance

- c. Roll call and the activation of alternates if necessary
- d. Minutes of previous meeting.
- e. Unfinished Business
- f. Public hearing.
- g. New business.
- h. Communications and miscellaneous.
- i. Other business.
- j. Adjournment.

(Note: Although this is the usual order of business, the board may wish to hold the hearings immediately after the roll call in order to accommodate the public or to otherwise amend the agenda as needed.)

Application/Decision

ARTICLE VI

6.1 Applications

- a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be submitted to the Board of Selectman's Office who shall record the date of receipt over their signature.
- b. Appeals from an administrative decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the board.
- c. The applicant shall pay for all required application and notice costs in advance.
- d. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.
- e. Applications shall be submitted in accordance with the meeting schedule of the Town of Hillsborough Zoning Board of Adjustment Application Submission and Meeting Schedule.
- f. All materials relevant to the application before the Board should be received at least 7 days before the date of the meeting. Materials received less than 7 days before the meeting or at the meeting may result in a continuance at the discretion of the board.
- g. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure. If any conflict arises between a form and the Rules of Procedure, the Rules of Procedure shall take precedent.

6.3 Public Notice

- a. Public notice of public hearings on each application shall be given in the manner prescribed in RSA 676:7.
- b. 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.

6.4 Public Hearing

The conduct of public hearings shall be governed by the following rules:

- a. The Board consider whether the application qualifies as a Project of Regional Impact pursuant to RSA 36:54 et. Seq.
- b. The applicant or their designee must be present in person at the hearing for the hearing to commence.
- c. The Chairperson shall call the hearing in session.
- d. The meeting notice shall be read by the Planning Director.
- e. The applicant shall be called on to present their application.
- f. Members of the Board may ask questions through the Chairperson at any point during testimony.
- g. Each person who participates shall do so through the Chairperson and be required to state their name and address and indicate whether they are a party to the case or an agent or counsel of a party to the case.
- h. Each member of the public will have up to five minutes to make their comment or ask their question. No one shall speak a second time until everyone has had the opportunity to speak once.
- i. Any member of the public who wants to speak a second time will have up to three minutes to make their comment or ask their question.
- j. Any person who wants the Board to compel the attendance of a witness shall present their request in writing to the Chairperson not later than 7 days prior to the public hearing.
- k. The Board of Adjustment will hear 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.
- l. The Board will begin deliberations. The Board will not take public comment at this time but reserves the right to ask questions.
- m. When the Board is satisfied that all of its questions have been answered, the floor will once again be open to comment before the public hearing is closed.
- n. If deemed necessary during the Board's deliberations, the Chairperson may call for a Motion to re-open the public hearing to ask one or more

questions on one or more specific issue(s). Upon a positive vote on such Motion, the question(s) shall be asked of the relevant party and public comment shall be allowed on such answer(s) alone. The public hearing will then be re-closed, and the Board continue with its deliberations.

- o. The Board will vote to approve, approve with conditions, deny, or continue the application

6.5 Decisions:

- a. 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 written by the Chairperson or their designee. The decision will be made available for public inspection within 5 business days, as required by RSA 676:3.
- b. Any decision other than a decision to continue a hearing to a date certain shall include specific findings of fact supporting the decision in accordance with RSA 676:3, I.
- c. Notices of Decision shall be recorded at the Hillsborough County Registry of Deeds and a copy will be sent to the applicant via certified mail.

6.6 Voting:

Deliberations may or may not begin immediately following the closing of the Public Hearing at the discretion 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.

6.6-1 Variances-Voting on Variance-After the Board discusses the five criteria of a variance during the Board's deliberations following the public hearing and is ready to vote, the Board shall vote on each of the five criteria individually, followed by a motion to grant or deny the application for the Variance, including such listed conditions of any approval upon which the Board has agreed.

6.6-2 Voting on All other Applications-After the Board has deliberated on the Application following the public hearing and is ready to vote, the Board shall vote on each of the individual criteria followed by a motion to grant or deny the application, including such listed conditions of any approval upon which the Board has agreed.

6.7 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 original decision per RSA 677:2. Motions for Rehearing can only be received during normal business hours

6.8 Motions 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 abutter list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7

Records

ARTICLE VII

- 7.1 The records of the Board shall be kept by the Town Clerk and made available for public inspection at 27 School Street, Hillsborough New Hampshire in accordance with RSA 91A
- 7.2 Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made. [RSA 676:3](#)
- 7.3 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. [RSA 91-A:2 II](#)

Amendments

ARTICLE VIII

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 city or town clerk and be available for public inspection pursuant to [RSA 676:1](#).

ARTICLE IX

Rules of Decorum and Commitment to Civil Behavior

It is acknowledged that:

1. Civil, respectful, and courteous discourse and behavior are conducive to the democratic and harmonious airing of concerns and decision making.
2. Uncivil discourse and/or discourteous and inappropriate behavior have a negative impact on the character and productivity of the decision-making process.
3. Anger, rudeness, ridicule, obscene or profane language, impatience, and lack of respect for others and personal attacks are not acceptable behavior.

4. Demonstrations in support or opposition to a speaker or idea are not permitted by members of the Board. The Chairperson is responsible for maintaining order. Failure to abide by this requirement may result in the forfeiture of the speaker's right to speak.

To maintain a cohesive, productive working environment, the members of the Hillsborough Zoning Board of Adjustment commit to:

1. Showing respect to each other as elected and appointed members, and staff representatives to the Board.
2. Promoting civility during Board meetings and tolerating nothing less.
3. Demonstrating reflective listening and not displaying negative body language (for example eye rolling, pencil tapping, shrugging of one's shoulders, hand gestures, etc.)
4. Allowing uninterrupted speech by those recognized as "having the floor" and refraining from speaking until recognized by the Chairperson.
5. Bringing appropriate committee-related concerns, issues, and conflicts to the Board for discussion.
6. Offering alternative solution(s) when addressing a problem or issue.
7. Maintaining the confidentiality of material discussed during non-public sessions or "non meetings" with counsel.

Pledge of Civility

The manner in which we govern ourselves is often as important as the positions we take. The Board's collective decisions will be better and truer to our mission when differing views have had the opportunity to be fully vetted and considered. All those who appear before the Zoning Board of Adjustment have the right to be treated with respect, courtesy, and openness.

We value all input. Accordingly, we commit to conduct ourselves at all times with civility and courtesy, to both those with whom the Board interacts and to each other. We also pledge to endeavor to correct ourselves, should our conduct fall below this standard.

Waivers

ARTICLE X

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.

ARTICLE XI

Joint Meetings and Hearings

- 10.1 [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 Building Inspector, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
- 10.2 Joint business meetings with any other land use board may be held at any time when called jointly by the Chairpersons of the two boards.
- 10.3 A public hearing on any appeal to the Board of Adjustment will be held jointly with another board **only** under the following conditions:
- The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - If the other board is the Planning Board, [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 Board of Adjustment Chairperson shall chair the joint hearing; and
 - 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
 - The other board shall concur in these conditions.

Approved by a majority vote of the Town of Hillsborough Zoning Board of Adjustment at a meeting held on September 12, 2022, and filed with the Town Clerk on September 13, 2022

Roger Racette
Roger Racette, Chairperson
Zoning Board of Adjustment

9/15/2022
Date