

Chapter A153
Zoning Board of Adjustment Procedures

1. AUTHORITY

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

2. OFFICERS

- a. A chairman shall be elected annually by a majority vote of the Board at the first scheduled meeting after the Annual Town Meeting. 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.
- b. A vice-chairman shall be elected annually by a majority vote of the Board at the first scheduled meeting after the Annual Town Meeting. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters that come before the board during the absence of the chairman.
- c. All officers shall serve for one (1) year and shall be eligible for reappointment.

3. MEMBERS AND ALTERNATES

- a. Members must reside in the community and they 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 shall participate in the decision making process and vote to approve or disapprove all motions under consideration.
- b. Up to five (5) 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. Alternates may ask questions during public hearings however they are not permitted to otherwise participate in discussions, deliberations, motions, seconds or votes unless they are appointed to replace an absent Board Member.

4. MEETINGS

- a. Regular meetings shall be held as necessary at the Conway Town Offices in Center Conway ~~at 7:30 pm~~ at 7:00 pm, on the third Wednesday of each month. Other meetings may be held and/or locations may be used on call of the chairman provided public notice and notice to each member is given at least twenty-four (24) hours excluding Sundays and legal holidays prior to such meetings.
- b. Town staff shall provide technical assistance as well as maintain a record of all meetings, transactions and decisions of the Board.
- c. Quorum. A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members. In the event that less than 5 members are present, the applicant shall be offered the choice of having the appeal heard with the present members or to have the hearing continued until five (5) members can be present to hear the appeal.

RSA 674:33,111 provides that "...the concurring vote of three (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.

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.

- d. 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.

- e. Order of Business. The order of business for regular meetings shall be as follows:
 - i. Call to order by the chairman
 - ii. Public hearing(s)
 - iii. Minutes of previous meeting
 - iv. Unfinished business
 - v. New business
 - vi. Communications and miscellaneous
 - vii. Other business
 - viii. Adjournment

5. APPLICATION/DECISION

- a. Applications.
 - i. Each application for a hearing before the board shall be made on forms provided by the Board. Complete applications must be submitted to the Town at least twenty-one (21) days prior to the regular meeting at which the appeal shall be heard.
 - ii. Additional information to be considered by the Board must be provided to the Town no less than seven (7) days prior to the meeting at which it is to be considered so town staff can forward that information to the Board no later than seventy-two (72) hours prior to said meeting.
 - iii. Appeals from an administrative decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision.
 - iv. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.
- b. Public Notice.
 - i. Public notice of public hearings on each application shall be given in the Conway Daily Sun and shall be posted at the Conway Post Office, the Center Conway post Office and the Town Offices not less than five (5) days 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.
- ii. 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, Town Clerk and other parties deemed by the board to have special interest. Said notice shall contain the same information as the public notice.
 - iii. Costs of all required notices must be paid for, in advance, by the applicant.
- c. Public Hearing. The conduct of public hearings shall be governed by the following rules:
- i. The Chairman shall call the hearing in session.
 - ii. The Chairman shall read the application and report on how public notice and personal notice were given.
 - iii. Members of the Board may ask questions at any point during testimony.
 - iv. 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.
 - v. Any member of the Board, through the Chairman, may request any party to the case to speak a second time.
 - vi. Any party to the case who wants to ask a question of another party to the case must do so through the Chairman.
 - vii. The applicant shall be called to present his appeal.
 - viii. Those appearing in favor of the appeal shall be allowed to speak.
 - ix. Those in opposition to the appeal shall be allowed to speak.
 - x. The applicant and those in favor shall be allowed to speak in rebuttal.
 - xi. Those in opposition to the appeal shall be allowed to speak in rebuttal.
 - xii. 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 seven (7) days prior to the public hearing. All expenses incurred under this section for compelling the attendance of a witness shall be paid by the party or parties requesting that a witness be compelled to attend a meeting of the Board. Payment for compelling witnesses must be submitted to the Town not later than seven (7) days prior to the public hearing.
 - xiii. The Board 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.
 - xiv. The Chairman shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.
 - xv. The hearing on the appeal shall be declared closed and the next case called up.
- d. Decisions. The Board shall decide all cases within fourteen (14) days. The Board will approve, approve with conditions, deny the appeal, or defer its decision. Notice of the decision or deferral will be made available for public inspection within seventy-two

(72) hours, as required by RSA 676:3, and will be sent to all persons notified of the public hearing. If the appeal is denied or deferred, the notice shall include the reasons therefore.

6. RECORDS

- a. The records of the board shall be kept by town administrators and made available for public inspection at the Town Offices in Center Conway in accordance with RSA 673:17.
- b. Final written decisions will be placed on file and available for public inspection within seventy-two (72) hours after the decision is made. RSA 676:3.
- c. 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 one hundred and forty-four (144) hours of the public meeting. RSA 91-A: 2 II.

7. JOINT MEETINGS AND HEARINGS

- a. 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 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.
- b. 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.
- c. A public hearing on any appeal to the Board of Adjustment will be held jointly with another board only under the following conditions:
 - i. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - ii. 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
 - iii. 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
 - iv. The other board shall concur in these conditions.

8. 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.