

Town of Amherst Zoning Board of Adjustment

A. Rules of Procedure

I. AUTHORITY

- A. These rules of procedure are adopted under the authority of New Hampshire RSA, Chapter 676:1 and the Zoning Ordinance of the Town of Amherst.
- B. Unless specifically covered in these rules, the Board will be guided by generally accepted principles of good meeting and board management. All cited RSA's are as amended.

II. BOARD MEMBERS AND ALTERNATE MEMBERS

- A. The Zoning Board of Adjustment shall consist of five (5) members as provided in RSA 673:3. The members of the Board shall be elected as prescribed by RSA 669. Each of the five (5) members shall be a resident of the Town of Amherst in order to be elected as a member of the Board. The term for each member shall be three (3) years in accordance with RSA 673:5.
- B. In addition to the members of the Zoning Board of Adjustment the Board may have up to five (5) alternate members who shall be appointed by the Board for a term of three (3) years in accordance with RSA 673:6. Prior to serving as a member or alternate member, the member shall be sworn into office in accordance with RSA 669:9.
- C. All elected and alternate members shall serve without compensation.
- D. A regular member shall mean an elected board member or member appointed to fill an elected member's position.
- E. A full board shall mean a board of five (5) regular members.

III. FILLING OF VACANCIES

- A. Vacancies in the Board occurring other than through the expiration of a term shall be filled in accordance with RSA 673:12, Filling Vacancies of Membership.

IV. REMOVAL OF MEMBERS

- A. Removal shall be in the manner governed by RSA 673:13 and any other applicable statute.

V. OFFICERS AND ORGANIZATION OF THE BOARD

- A. Officers consisting of a chair, vice-chair and secretary/clerk shall be elected annually in the April meeting following the Town election. In the event that a quorum is not present for the meeting, then the election of officers shall take place during the first meeting at which a quorum is present.
- B. The chair shall preside over meetings and hearings and shall affix his/her signature in the name of the Board. The chair shall be the official spokesperson of the Board in matters governing the conduct of the hearing. The vice-chair shall preside in the absence of the chair and have full powers of the chair on matters that come before the Board during the absence of the chair. In the event of a rehearing of a meeting the vice-chair presided, he/she shall preside for the rehearing.
- C. In the event that neither the chair nor vice-chair is present or cannot sit due to a conflict of interest, the Board shall elect a chair pro tem from the ranks of the regular members. In the event that no regular members are present or able to sit due to a conflict of interest, the alternates shall elect a chair pro tem and vote to seat the remaining alternates as members pro tem.
- D. In the absence of the secretary/clerk a temporary secretary/clerk shall be appointed by the chair as needed to maintain a record of all meetings, transactions and findings of the Board and to perform other duties as the Board shall direct.
- E. All officers shall serve a term of one (1) year and be eligible for re-election.

VI. QUORUM

- A. A *quorum* for all business shall consist of three (3) members (RSA 673:10) except for the election of officers which requires a full five (5) member vote. Action on any application or transaction of business requires a vote of at least three members. When there is less than a full Board of regular and alternate members present, the applicant shall be given the opportunity to have his/her application heard at the next regularly scheduled meeting of the Board.
- B. If a member is absent, disqualified, rescued or cannot act in a particular case the chair, in accordance with RSA 673:11, will designate an alternate who

shall have all the powers and duties of a regular member in regards to the application under consideration on which the regular member is unable to act or to fill the absence of a regular member.

VII DISQUALIFICATION

- A. If any member finds it necessary to disqualify himself or 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/her 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 vote shall be advisory and not binding.

VIII MEETINGS

- A. Regular meetings shall be held in the Amherst Town Hall or other location after due notice. Meetings shall be held at 7:00 PM on the third Tuesday of each month unless there are no applications pending. Other meetings shall be held on the call of the chair and notice shall be given to each member and the public of at least seven (7) calendar days prior to said meeting.
- B. Hearings on applications filed and accepted shall end at 10:00 PM and the Board shall move into the deliberations. Hearings scheduled, but not heard, shall be given priority at the next regularly scheduled monthly meeting or for good cause shown, heard at a specially scheduled meeting by a vote of the Board. All matters will be decided at the day of the hearing except for those applications where the Board believes that additional time is necessary for the review of the facts and law. In such cases, there shall be a motion and vote to adjourn and reconvene to decide the matter in question.
- C. The chair shall preside over all meetings. In the absence or recusal of the chair, the vice-chair shall preside. In the absence of both, the Board, pursuant to Article V, will elect a chair for the meeting, for the application.
- D. The order of business for regular meetings shall be as follows:
1. Call to order
 2. Public hearing
 - i. Designation of alternate(s) in place of absent/recused regular member(s), as necessary
 - ii. Hear all cases
 - iii. Vote to go into deliberations

- iv. Deliberate and vote on all cases
 - v. Vote to come out of deliberations
 3. Old business – to vote to grant a rehearing from a prior meeting
 4. New business
 5. Approval of the minutes from previous meetings
 6. Other Board business
 7. Adjournment
- E. The conduct of the hearing of applications shall be governed by the following rules:
 1. The chair shall call the hearing to order.
 2. The chair shall introduce the Board members, the recording secretary and the Planning Director.
 3. The chair shall provide the applicants and public a complete explanation of the process the Board follows including the appeals process.
 4. The secretary/clerk then reads the purpose of the application (case) in the manner in which public and personal notice was given.
 5. The applicant is then called to present his/her application. This presentation shall address all of the required tests for the requested form of relief sought from the Zoning Ordinance.
 6. Board members shall have the opportunity to ask questions, through the chair, at any point during the testimony. Questions from the public, through the chair, will be accepted after the Board has finished its questions.
 7. All members of the public will be allowed to speak. However, members wishing to speak again may do so only after everyone wishing to speak for the first time have done so.
 8. The applicant shall have the right to respond to a member of the public after that member has finished. The Board shall also have the right to respond to the member as well.
 9. When the questions and statements have been exhausted, the hearing on the application shall be declared closed.
 10. The hearing shall proceed to the next application and follow the process described in items 4 – 9 above.
 11. After the final application has been heard, the chair shall declare the hearing closed.
 12. The Board shall vote to go into the deliberative mode. At this point, members of the public are invited to stay and listen to the deliberations. However, no further testimony or comment will be allowed or taken.

F. Regular Board Members and Alternates shall notify either the Planning Director (or the Planning Office) or the Board Chair if they are not able to attend a noticed meeting. Such notice shall be given at least three (3) days prior to the meeting or as soon as possible.

IX DELIBERATIONS AND DECISIONS

A. The Board shall decide each application (case) immediately following the public hearing in which the matter was brought forward, unless there is a motion to recess and reconvene to the next regularly scheduled meeting if necessary in order to call additional witnesses to testify or to study and review the application and testimony in relation to the law of for other good cause shown.

B. After deliberations on an application, the Board shall grant the application as requested or as requested with conditions, deny the application or table deliberations until the next regularly scheduled meeting.

C. During deliberations, the following procedure shall be used for cases under consideration with each case being treated individually:

1. The secretary/clerk shall identify the case by its case number.
2. The chair shall call for a motion and vote as to whether the application constitutes any regional impact. If the majority vote is that there is regional impact, then further deliberations shall be tabled until the next regularly scheduled meeting to allow the affected Towns to be notified. If the majority vote is that there is no regional impact, then deliberations on the application shall proceed.
3. If a board member wishes, for any reason, to have the application tabled to a future date, the member shall move and describe the reasons for doing so. If the motion fails, then deliberations shall proceed.
4. Deliberations shall proceed on each application based on the type or request as follows:

- i. **Variations** - In the case of a request for a variance, a determination shall be made as to whether the variance application meets the criteria laid out in RSA 674:33. Each test as prescribed by State Law shall be discussed to include, but not be limited to, whether or not the applicant demonstrated that the test had been met along with the reasons why the board members agreed or disagreed. A vote shall then be taken to determine whether or not the test was met. A test is met it receives a majority of the votes. In the case of a tie, the test shall fail.

- i. If all the individual test votes pass, then the variance shall be granted. If any one of the individual test votes fails, then the variance shall be denied.
 - ii. The chair shall declare the results.
 - ii. **Special Exceptions** – In the case of a request for a special exception, a determination shall be made as to whether or not the applicant demonstrated that each of the conditions required in the Zoning Ordinance, including each of the 6 conditions articulated in Article V, Section 5.2, Subsec. 5.2.1, have been met along with the reasons why the board members agreed or disagreed. The determination shall be made in the form of a vote after the discussion of each condition. A majority in favor is required for meeting the condition.
 - i. The chair shall declare the results.
 - iii. **Appeal from an Administrative Decision** – In the case of a request to overturn a decision rendered by an administrative official or board, the ZBA shall determine if the decision made was an error in a order, requirement, decision or determination. If such an error occurred, then the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from and may make such order or decision as ought to be made.
 - i. The chair shall declare the results.
 - iv. **Equitable Waiver** – In the case of a request for an Equitable Waiver, the Board shall discuss and vote on each of the conditions as required by RSA 674:33a. A majority vote shall be required to meet the condition. In lieu of this process, the owner may try to convince the Board that the violation has existed for 10 or more years and that no enforcement action has been taken either by the Town or by any person directly affected by the violation. If so, then, by majority vote, the Board may grant the waiver.
 - i. The chair shall declare the results.
- 5. The only vote permitted is one to table deliberations until a specified time and date in the future.

X RECORDS

- A. Records of the meeting including minutes of all meetings and the names of the Board members, persons appearing before the Board shall be maintained in accordance with RSA 673:17, RSA 676:3 and RSA 91-A;2II.

XI GENERAL RULES

- A. Members of the Board may ask questions at any point during the testimony through the chair.
- B. Only one member of the Board may speak at a time.
- C. Any member of the Board, through the chair, may request any party to the application or member of the public who has spoken for or against the application to reappear.
- D. Each person who appears shall be required to state his/her name and address and whether he/she is a party to the application or agent or counsel of a party to the application or an interested party.
- E. There shall be one spokesperson for an application. However, he/she may request of another in attendance to provide an answer to a question or questions.
- F. Any party to the application or member of the public who desires to ask a question of another party must do so through the chair.
- G. The chair of the meeting may establish a maximum time limit per speaker or per issue.

XII REHEARING

- A. Rehearing (10.15.13)
 - 1. Any party to the application or person directly affected thereby or who disagrees with a decision of the Board may request a rehearing under the provisions of RSA 677:2.
 - 2. The request for a rehearing must be filed within 30 calendar days of the decision of the Board which is being questioned.
 - 3. The request for a rehearing shall be filed on forms available from the Zoning Office and eleven copies of all other required documents shall be submitted as part of a completed Request for Rehearing application.
- B. A Request for Rehearing shall set forth fully all the grounds upon which it is claimed that the decision or order complained of is unlawful or unreasonable; and any supporting plans, pictures, documents or other evidence.
- C. The Board shall consider all material presented and will grant a rehearing if:
 - 1. An error was made by the Zoning Board of Adjustment or the Town,
 - 2. The applicant presents new information which was not reasonably available at the time of the hearing, or
 - 3. The applicant presents good reason for the request in accordance with RSA 677:3.

D. A petitioner not satisfied with the order or decision by the Board on a request for a rehearing shall have the right to appeal the matter to the Superior Court within 30 calendar days of the Board's decision as provided for in RSA 677:4. If a rehearing is granted by the Zoning Board of Adjustment, then the petitioning party must apply for the rehearing within thirty (30) days of the date of the Board's decision to grant a rehearing. The applicant is responsible for all application and abutter notification costs associated with the rehearing process. If application is not made within the thirty (30) days, then the rehearing is forfeited. At that point, relief may be sought from Superior Court pursuant to RSA 677:4.

XIII APPLICATIONS

- A. Each application shall be made on forms provided by the Zoning Office. Applications must be legibly completed and accompanied by accurate and scaled drawings, if necessary, for the relief requested in the application. Each drawing shall be certified by a licensed surveyor or engineer. Applications shall be submitted to the Zoning Office.
- B. The Board shall begin formal consideration and shall act to approve, conditionally approve or disapprove an application or motion for rehearing within ninety (90) days unless it and the applicant agree on an alternative timeframe, or it votes to table the application to get additional information for consideration. Applications tabled by the Board shall be untabled at the next regularly scheduled meeting.
- C. The Planning Director, as the official appointed agent of the Zoning Board of Adjustment shall have the ministerial authority to review and reject any application relating to the follow items:
1. Illegible handwriting or script that cannot be clearly read after being photocopied
 2. When required, submission of drawings and measurements pertaining to the application without certification of a licensed surveyor or engineer.
 3. When required, submission of a certified plot plan without two foot (2') contours for applications relating to water resource management, steep slopes and buffer impacts.
 4. Failure to identify abutters or subject property by map and lot number

- D. Applications rejected shall be returned to the applicant. An applicant objecting to the rejection may appeal the matter to the Board. No application shall be rejected based on legal or substantive issues. Except for the above, all applications will be processed and duly scheduled for a hearing before the Board. If the Board finds the application lacking in information, the application may be rejected or the matter continued to a future hearing.
- E. Notification of the Board's decision on an application shall be sent to the applicant, filed in the records of the board and be available to the public.
- F. Upon acceptance of the application, publication in the local newspaper and public notice of a hearing, no applicant shall be permitted to unilaterally postpone such public hearing under normal circumstances, provided however, that the Board retains the power to recess or adjourn any proceeding before it to a future date certain for good cause shown and to otherwise control the timing and conduct of its proceedings. The applicant shall have the right to withdraw his/her application from consideration of the Board at any time prior to the public hearing. The right to resubmit an application seeking substantially the same relief to a later date shall be with the leave of the Board subject to such conditions as the Board may impose.

XIV FORMS

- A. All forms and revisions thereof shall be adopted by majority vote of the Board and shall become a part of these forms.

XV WAIVERS

- A. 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.

XVI PUBLIC NOTICE

- A. Public notice on each application shall be given in a local newspaper and shall be posted at two (2) public places, such as the Town Hall, Post Office, or public library at least five (5) days prior to said hearing as provided by RSA 676:7. Such notice shall include the name of the applicant, description of the property, action desired by the applicant, provision of the Zoning Ordinance concerned, the type of appeal being made and the time and place of the hearing.
- B. Personal notice shall be made by certified mail to all abutters no later than five (5) days before the date fixed for the hearing. Abutter shall mean any

person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Board. For purposes of notification, the term abutter shall include any person who is able to demonstrate that his/her land will be directly affected by the application under consideration.

XVII AMENDMENTS

These rules of procedure may be amended by a majority vote of the elected members of the Board. The rules of procedure may be suspended by a two-thirds (2/3) vote of the Board.

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