

**ZONING BOARD OF ADJUSTMENT  
TOWN OF DEERING NEW HAMPSHIRE  
BYLAWS/RULES OF PROCEDURE  
(Revised December 15, 2010)**

**SECTION 1: AUTHORITY**

- 1.1 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 Deering, New Hampshire.
- 1.2 The board, by at least three concurring votes, may waive any provision of these rules not otherwise mandated by state or federal law or by town ordinance.

**SECTION 2: OFFICERS**

- 2.1 **A chair** shall be elected annually by a majority vote of the board, at the first meeting following town meeting. 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.
- 2.2 **A vice-chair** shall be elected annually by a majority vote of the board, at the first meeting following town meeting. 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.
- 2.3 **A clerk** shall be appointed by the Board. The clerk 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.
- 2.4 **All officers** shall serve for one year and shall be eligible for re-election.

**SECTION 3: MEMBERS AND ALTERNATES**

- 3.1 The board shall consist of five (5) members appointed by the Board of Selectmen, who must be residents of the community. 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 chair as soon as possible. Members shall participate in the decision making process and vote to approve or disapprove all motions under consideration.
- 3.2 Up to five alternate members shall be appointed by the Board of Selectmen, and should attend as many meetings as practicable 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 or a regular position is vacant. With the exception of voting, alternate members may fully participate in all proceedings before the Zoning Board of Adjustment. Alternate members may vote if designated by the Chair to act in the absence of a regular member.

## SECTION 4: MEETINGS

4.1 **Regular meetings** generally will be held at Deering Town Hall, at 7:00 p.m. on the fourth Wednesday of each month, unless conflicts with holidays would dictate otherwise. Other meetings may be held on call of the chair provided public notice and notice to each member is given at least twenty four (24) hours, as required by RSA 91-A:2, II, prior to such meetings, Sundays and legal holidays excluded.

4.2 **Quorum.** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members. RSA 674:33, III provides that “[t]he concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.” 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. In the absence of a full five-member board, applicants shall have the option of continuing the hearing on their application to a later date for consideration by a full five-member board.

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.

4.3 **Disqualification.** If any member finds it necessary to disqualify himself 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, another member of the board, the applicant, or any abutter 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 chair 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 deliberations on the case.

4.4 **Order of Business.** The order of business for regular meetings shall ordinarily be as follows:

- a. Call to order by the chair
- b. Roll call by the clerk or introductions of members present by the chair.
- c. Public hearing
- d. Minutes of previous meeting
- e. Unfinished business
- f. New business
- g. Communications and miscellaneous

- h. Other business
- i. Adjournment

## SECTION 5: APPLICATION/DECISION

### 5.1 Applications

- a. Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the Zoning Administrator who shall record the date of receipt and provide copies of the application and attachments to the members of the board of adjustment. **All applications for variance, special exception or equitable waiver of dimensional requirement must include a scale drawing sufficient to show dimensions of the property, distances of existing and proposed structures from the boundary lines and any other features pertinent to the application.** The original and five (5) copies of the application and all attachments shall be submitted to the Zoning Administrator.
- b. All owners of the property in question must consent to the application, either by signing the application form itself or by submitting a notarized written consent prior to the public hearing.
- c. The board shall reject all applications not properly completed. All other applications shall be scheduled for a public hearing within 30 days of receipt by the board.
- d. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.
- e. Motions for rehearing of any decision of the board under RSA 677:2 shall be made within 30 days after the vote which granted or denied the application; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within five business days of the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefore, within 30 days after the date on which the written decision was actually filed.
- f. Upon the filing of a motion for a rehearing, RSA 677:3 provides that the Board of Adjustment shall within 30 days either grant or deny the motion, or suspend the decision complained of pending further consideration.
- g. The board will not accept motions to reconsider decisions on motions for rehearing.
- h. Applicants or interested parties may not contact members of the board of adjustment outside a public meeting with regard to an application pending before the board. All questions regarding pending applications or the zoning process should be discussed with the Zoning Administrator.

5.2 **Fees.** Filing fees must be submitted with the application form. The fees for all appeals shall be \$125.00 plus \$6.00 for each abutter, excluding the applicant, payable to the Town of Deering.

5.3 **Public Notice**

- a. Public notice of public hearings on application shall be given in a local newspaper not less than five (5) days before the date fixed for the hearing. Notice shall include the names of all applicants, description of property, including 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 to the applicant and all abutters not less than 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.
- c. Any person who wants the board to compel the attendance of a witness shall present a request in writing to the chair at least 14 days prior to the public hearing.

5.4 **Public Hearing.** The conduct of public hearings shall ordinarily proceed in the following order:

- a. The chair shall call the hearing in session and ask for the clerk's report on the first case.
- b. The chair shall read the application and report on how public notice and personal notice were given.
- c. Members of the board may ask questions at any point during testimony.
- d. Each person who appears shall be required to state his/her name and address and indicate whether he/she is a party to the case or an agent or counsel of a party to the case.
- e. Any member of the board, through the chair, may request any party to the case to speak a second time.
- f. Any party to the case who wants to ask a question of another party to the case must do so through the chair.
- g. The applicant shall be called to present his/her appeal.
- h. Those appearing in favor of the appeal shall be allowed to speak.
- i. Those in opposition to the appeal shall be allowed to speak.
- j. The applicant and those in favor shall be allowed to speak in rebuttal.
- k. Those in opposition to the appeal shall be allowed to speak in rebuttal.

- l. 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.
  - m. The chair 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 board or the floor.
  - n. The hearing on the appeal shall be declared closed and the next case called up.
- 5.5 **Deliberations.** Unless the applicant and all abutters present agree otherwise, only those members of the Board who were present during the public hearing may vote or participate in the deliberations on the same matter. Alternate members who have not been seated as voting members may not participate in deliberations of the board or vote on the application.
- 5.6 **Decisions.** The board shall decide all cases within 90 days of commencement of the public hearing. This time limit may be extended at the request or by permission of the applicant. 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 five business days, 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. Unless otherwise stated, each decision by which an application is approved shall be deemed to be subject to at least the following conditions:
- a. All development shall conform to the dimensions, construction sequence, equipment and material specifications shown on the latest version of any plan or plans submitted by, or on behalf of, the applicant(s); and
  - b. All representations made by, or on behalf of, the applicant(s) shall be deemed to be conditions of the approval.
- 5.7 **Stenographic Record.** Any person interested in an application may arrange for the services of a certified court reporter to attend any proceedings associated with the application. All arrangements for attendance by the reporter shall be the responsibility of the person or persons requesting it. The requesting person or persons shall provide at least 24 hours prior notice of such attendance and shall provide a transcript of the proceedings at no cost to the board.

## **SECTION 6: JOINT MEETINGS AND HEARINGS**

- 6.1 As provided in RSA 676:2, joint meetings and hearings may be held with other land-use boards at the discretion of the boards involved.
- 6.2 Joint business meetings with any other land-use board(s) may be held at any time when called jointly by the chairs of the boards involved.
- 6.3 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 by the same applicant(s) regarding the same subject matter.
- b. If the other board is the Planning Board, the Planning Board chair shall chair the joint hearing as required by RSA 676:2, and the Planning Board's procedures for public hearings shall be followed, together with such other additional provisions as required by the Board of Adjustment.
- c. If the other board is not the Planning Board, the Board of Adjustment chair shall preside over the joint hearing and the provisions covering the conduct of public hearings set forth in these By-laws/Rules of Procedure, together with such additional provisions as may be required by the other board, shall be followed.

## **SECTION 7: RECORDS**

- 7.1 The records of the board shall be kept by the clerk and made available for public inspection at the Deering Town Hall in accordance with RSA 673:17.
- 7.2 Final written decisions will be placed on file and available for public inspections within five 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 subject matter shall be open to public inspection within five (5) business days after the public meeting. RSA 91-A:2 II.

## **SECTION 8: AMENDMENTS**

These Bylaws/Rules of Procedure may be amended by a majority vote of the members of the board provided that such amendment is first read at the meeting immediately preceding the meeting at which the vote is taken.

Revised December 15, 2010