

Zoning Board of Adjustment

Town of Auburn

Rockingham County, New Hampshire

RULES OF PROCEDURE

ARTICLE 1 - AUTHORITY.

- 1.1 These rules of procedure are adopted under the authority of the New Hampshire Revised Statutes Annotated, Chapter 676:1, and the Zoning Ordinance and map of the Town of Auburn, New Hampshire.
- 1.2 Whenever any of these Rules conflict with, state laws or the Town of Auburn Zoning Ordinance, the state laws and/or Zoning Ordinance shall govern.

ARTICLE 2 - MEMBERSHIP, TERMS OF OFFICE AND OFFICERS.

2.1 Members and Alternates

- (A) **Five full members** shall be appointed by the Board of Selectmen in staggered 3 year terms pursuant to R.S.A. 673:3. Up to **four alternate members** shall be appointed by the Board of Selectmen, for 3 year terms. Alternate members 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.
- (B) At meetings, alternates who are not activated to fill the seat of an absent or recused member, or who have not been appointed to fill the unexpired term of a vacancy, may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Alternates may participate in deliberations by the Board, but may not vote. At all times, the chair shall fully inform the public of the status of any alternates present and identify the members who will be voting on the application.
- (C) During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made.
- (D) Members must reside in the Town of Auburn. Members 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 and secretary as soon as possible. Members, including the chairman and vice-chairman, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration, unless they are absent or have been disqualified due to a conflict.

- (E) In the event of a vacancy, other than through the expiration of a term of office, the Board of Selectmen shall appoint a replacement. The Chairperson may designate an alternate member of the Board to fill a vacancy temporarily until the Board of Selectmen are able to fill the vacancy. If the vacancy is for an ex officio member, the Chairperson may only designate the person who has been appointed to serve as the alternate for the ex officio member.

1.3 **Officers**

- (A) **A chairman** shall be elected annually by a majority vote of the Board in the month of April. 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 in the month of April. The vice-chairman shall preside in the absence of the chairman, and shall have the full powers of the chairman on matters which come before the Board during the absence of the chairman.
- (C) **A secretary** shall be part of the personnel of the Town of Auburn. The secretary shall maintain a record of all meetings, transactions and decisions of the Board, be responsible for all public notices and mailings, shall maintain a file on all matters that come before the Board, and perform other such duties as the Board may direct by resolution.
- (D) The chairman and vice-chairman shall serve for one year and shall be eligible for re-election.

ARTICLE 3 – MEETINGS.

- 3.1 **Regular meetings** shall be held at the Auburn Town Hall meeting room, beginning at 7:00 p.m., on the fourth Tuesday of the month. Other meetings may be held on the call of the chairman, provided public notice and notice to each member is given in accordance with RSA 91-A:2, II. The Board reserves the right to change the meeting schedule to accommodate holidays, weather conditions, or unforeseen circumstances.

3.2 Quorum.

- (A) A quorum for all meetings shall be three members, including alternates sitting in place of members.
- (B) The chairman 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.
- (C) If any regular Board member is absent from any hearing or meeting, 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) If there are less than five members (including alternates) present, the chair shall give the applicant the option to proceed or to continue the hearing until the next date at which 5 members can be present. Should the applicant choose to proceed with less than five members present, that shall not constitute the sole grounds for a rehearing or appeal should the application fail.

3.3 Disqualification. If any member finds it necessary to disqualify himself or herself from sitting on 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 or 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 that the Board vote on the question of disqualification. Any such request shall be made before the public hearing begins. Such a vote shall be advisory and non-binding.

Either the chairman or member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself/herself from the Board table during the public hearing and during all deliberations on the case.

3.4 Order of Business. The order of business for regular meetings shall be as follows.

- (A) Call to order by the chairman.
- (B) Introduction of members.
- (C) Overview of hearing procedures.
- (D) Unfinished business or continuances.
- (E) Public hearings.
- (F) New business.

- (G) Old business.
- (H) Minutes of previous meeting.
- (I) Communications and miscellaneous.
- (J) Adjournment.

The Chairman may deviate from this order if he or she determines that there is just cause to do so.

ARTICLE 4 - APPLICATIONS.

4.1 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 Board secretary who shall record the date of receipt over his or her signature.

(B)

Applications for the agenda of the next regular meeting of the Board shall be closed at 3:30 p.m., on the date set as the filing dealing before the scheduled meeting date. The schedule of filing deadlines is on the Town of Auburn website under the planning and zoning departments. Applications received after the filing deadline will be scheduled for a hearing at the next month's regular meeting date.

- (C) Appeals from an administrative decision taken under R.S.A. 676:5 shall be filed within 30 days of the decision.
- (D) At each meeting, the Secretary shall present to the Board all applications received by the deadline for the meeting, as set forth above in Section 4.1(B).
- (E) All application and appeal forms and revisions to such shall be adopted by resolution of the Board, and shall be set forth in the Appendix to these Rules of Procedure.

4.2 Public Notice

- (A) Public notice of public hearings on each application shall be published in The Union Leader, and shall be posted on the town website and at the town office not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property, (including tax map identification),

action desired by applicant, provisions of 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, return receipt requested, 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 a special interest in the application or appeal. Said notice shall contain the same information as contained in the public notice.
- (C) The applicant shall pay in advance for all required notice costs.

ARTICLE 5 - HEARINGS AND DECISIONS.

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

- (A) The chairman shall call the hearing in session and ask for the case to be read into the record.
- (B) If the case involves an administrative appeal of a decision by the Building Inspector, the Building Inspector may present his or her case.
- (C) The applicant shall be called to present his appeal, shall read the application into the record, and provide any supporting documentation or testimony.
- (D) Members of the Board may ask questions at any point during testimony.
- (E) Each person who appears shall be required to state his or her name and address and indicate whether he or she is a party to the case or an agent or counsel of a party to the case.
- (F) Any member of the Board, through the chairman, may request any party to the case to speak a second time.
- (G) Any party to the case who wants to ask question of another party to the case must do so through the chairman.
- (H) Those appearing in favor shall be allowed to speak.
- (I) Those in opposition to the appeal shall be allowed to speak.
- (J) The applicant and those in favor of the application shall be allowed to speak in rebuttal.
- (K) Those in opposition to the appeal shall be allowed to speak in rebuttal.

- (L) 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 ten (10) business days prior to the public hearing.
- (M) 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 Auburn Zoning Ordinance and state zoning law.
- (N) The Board may enter into deliberations prior to making a decision on the case. During that time, only Board members and alternates are allowed to comment. After the Board exits deliberation, the applicant will be allowed an opportunity to clarify points that were brought forth during deliberation.
- (O) If the Board wishes, it may proceed to a vote on the application.
- (P) The Chairman may deviate from the order of procedure at public hearings when, in his/her opinion, there is good cause to do so, and doing so will not harm the interests of an applicant or appealing party.

5.2 Decisions. The Board may elect to decide the case the night of a hearing, but shall decide all cases within 30 days of the close of the public hearing, and shall deny or approve the application with or without conditions, or grant or deny the appeal. The secretary shall record the vote of the Board. Notice of the decision will be made available for public inspection within five (5) business days as required by R.S.A. 676:3. Notice will be sent to the applicant by U.S. mail. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the planning Board, the Board of Selectmen, Town Clerk, property tax assessor and/or other town officials as determined by the Board. Notice shall be posted at the town offices.

5.3 Voting. At the discretion of the chairman, the voting on all motions shall be by show of hands, voice vote or by roll call of the members, of which the yeas, nays, and abstentions shall be recorded in the minutes. There must be at least 3 member votes in order to reach a decision.

5.4 Motion for Rehearing.

(A) Within 30 calendar days after a final order or decision by the Board, any party to the action or proceeding before the panel may apply for reconsideration or rehearing with respect to any matter in the action or proceeding, or covered or included in the order. The Board may also reconsider a decision on its own motion. The 30 day period for filing a request for rehearing begins on the date following the date upon which the

Board voted to approve or deny the application or appeal. Any non-applicant party filing a motion with the Board shall simultaneously copy the applicant with the motion.

(B) **Specifications.** Such motion shall set forth fully every ground which it is claimed that the decision or order complained of is unlawful or unreasonable.

(C) **Action on Motion.** The Board will vote upon the request for rehearing within 30 days of a timely filed request, by either granting or denying the request, or suspending the order or decision complained of pending further consideration. If a request for rehearing is granted, the matter should be scheduled for rehearing at the next regularly scheduled meeting of the Board for which sufficient public notice can be provided.

ARTICLE 6 – RECORDS.

- 6.1 The records of the Board shall be kept by the Secretary and made available for public inspection at the Town office, in accordance with R.S.A. 673:17.
- 6.2 Final written decisions will be placed on file and available for public inspection within five (5) business days after the date the decision is made, in accordance with R.S.A. 676:3.
- 6.3 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 five (5) business days after the date of the public meeting. See R.S.A. 91-A:2,II.

ARTICLE 7 – AMENDMENTS.

- 7.1 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. A copy of the Rules of Procedures shall be on file with the Office of the Town Clerk and the Secretary of the Zoning Board of Adjustment.

ARTICLE 8 – WAIVERS.

- 8.1 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.
- 8.2 In order to grant a waiver of these rules, there must be an affirmative vote by a majority of sitting members of the Board.

ARTICLE 9 - JOINT MEETINGS AND HEARINGS.

- 9.1** In accordance with R.S.A. 676:2, the Board of Adjustment may hold joint meetings or hearings with other “land use Boards”, including the Planning Board, Historic District Commission, and the building code Board of Appeals and the building code Board of Appeals and the Building Inspector. Each Board shall have discretion as to whether or not to hold a joint meeting with any other land use Board.
- 9.2** 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.
- 9.3** 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 regarding the same subject matter;
 - (B) If the other Board is the Planning Board, R.S.A. 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;
 - (C) The provisions concerning 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
 - (D) The other Board shall concur with these conditions.

ARTICLE 10 - CODE OF CONDUCT.

- 10.1** When acting upon an application, the Board is acting in a quasi-judicial capacity. As such, the members are expected to base their decisions upon the record of public testimony, documents submitted in connection with the application, reports of engineers and other experts, and other proceedings of duly noticed public hearings. Members may also use their personal knowledge of the community and of the parcels of land under consideration, as input to the public deliberations and decision-making process.
- 10.2** Members should not engage in conversations about the merits of applications with interested parties or the general public except during the public hearing on the matter. If such conversations or other exchanges of information occur, the members have an obligation to disclose the content of the communication at the next Board meeting, and to provide copies of any documents or correspondence received by the member to the Secretary and the Chairman.

- 10.3** All proceedings of the Board are subject to the provisions of N.H. R.S.A. 91-A, the "Right-to-Know Law". As such, any discussion of official business involving a quorum of the Board, whether or not at a noticed and scheduled meeting, is a "meeting," and subject to the requirements of the Right-to-Know Law. Members should avoid participating in any meeting as defined in R.S.A. 91-A:2 that are not duly noticed to all the members of the Board. This includes discussion in any format, whether in-person, via telephone, or via any form of electronic media.
- 10.4** The members of the Board are subject to the provisions of N.H. R.S.A. 673:14, I, with respect to the potential for a conflict of interest. If a member has a direct or personal financial interest in the outcome of an application that is different from that of the general public, or if a member would be disqualified to sit on a jury hearing the subject matter of the application, the member has a conflict of interest. If a member has expressed an opinion directly relating to the merits of an application, that member may be subjected to recusal from participation in the matter in accordance with the procedure set forth in RSA 673:14, II. In cases of conflict of interest, the Chairperson shall appoint an alternate member to take the place of the disqualified member, in accordance with Article 3.3 of these Rules.
- 10.5** No member or officer of the Board shall represent the official position of the Board in any matter, unless authorized by a resolution of the Board, approved by majority vote of the Board at a duly noticed public meeting, authorizing the member or officer to make such representations or take such actions on behalf of the Board. Exceptions to this provision include any responsibilities specifically assigned under State Law.