



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

Zoning Board of Adjustment

ZONING BOARD OF ADJUSTMENT Meeting

December 17, 2024, 6:30 p.m.

Middleton Old Town Hall
200 Kings Highway
Middleton, NH 03887

These minutes serve as the legal record of the meeting and are in the form of an overview. It is neither intended nor is it represented that this is a full transcription. A recording of the meeting is available online at <https://www.youtube.com/@Townofmiddleton9741/streams> for a limited time for reference purposes.

DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. This draft is available for public review and the approved copy will be posted on the Town of Middleton website.

Meeting Called to Order by Chair Therriault at 6:39 p.m.

Roll Call

Members Present: Charles Therriault (Chair)
Jim Keegan (Vice-Chair)
Linda Adamo
Lorri Gunnison
Tim Cremmen (BOS Liaison)

Members Absent: Dan Saliga

Public Present: None

Pledge of Allegiance

Invocation

Attachments

Agenda
Proposed Rules of Procedure

Election of Officers

T. Cremmen said all ZBA members are up to date with their Oath of Office. Joe Varga's term as alternate has expired and he did not sign up for another term. The ZBA does not currently have any alternates.

J. Keegan made a motion to wait until all members are present to vote for Chairman and Vice Chairman.

L. Gunnison seconded the motion.

Vote: Yes - 3 No - 0 Abstain – 1

Motion carried.

New ZBA Rules and Procedures

R. Willis will correct the address for the Old Town Hall.

L. Adamo said the town has the option to appoint or elect. The Town of Middleton's procedure has been the Selectboard appoints the members of the ZBA and the members vote for the Chair and Vice Chair. A warrant article would be needed to change the process if members are to be elected.

There was some discussion about the correct procedure.

T. Cremmen said he would research the applicable RSA.

L. Adamo made a motion to accept the Rules of Procedure with the correction to the address of the Old Town Hall.

L. Gunnison seconded the motion.

There was some discussion about whether to have an attorney review the document.

R. Willis said it is from a template recommended by the NH Municipal Association's attorneys.

T. Cremmen said the Selectboard reviewed the document and approved it.

C. Therriault thinks an attorney should review it and be sure it matches the recently updated and approved Applications and Instructions. He is concerned about the Town's liability for contradictions.

L. Adamo made a motion to move the question and vote.

L. Gunnison seconded the motion.

Motion carried.

Vote: Yes - 3 No - 0 Abstain – 1

Motion carried.

Review of Minutes

L. Adamo made a motion to accept the minutes from the November 19, 2024 meeting.

J. Keegan seconded the motion.

Motion passed.

Planning Board Workshop December 19, 2024

The Planning Board has invited ZBA members and other interested parties to a workshop they are holding as part of their review for recommended changes, edits and additions to the Zoning Ordinance. They would appreciate input from various stakeholders including the ZBA.

There was discussion about changes that should be considered e.g. the Family Compound article and setbacks for the Village District. There was discussion about whether the ZBA should make recommendations to the Planning Board as a group.

T. Cremmen said he would tell the Chair of the Planning Board some members will attend.

C. Therriault reminded everyone that if there are three or more ZBA members together and they are discussing ZBA business, it is a meeting and needs to be noticed. Anyone who attends the Planning Board Workshop should do so as a resident. They are not representing the ZBA.

L. Gunnison said an ongoing issue is that the ZBA needs written confirmation of denials from the Code Enforcement Officer to address variances that are requested. No one should be coming before the Board without knowing why their building permit was denied.

J. Keegan suggested **T. Cremmen** talk to the Selectboard about the need to have the CEO attend some public hearings.

Motion to Adjourn

C. Therriault made a motion to adjourn at 7:17 p.m.

L. Adamo seconded the motion.

Motion passed.

Respectfully submitted,

Robin Willis
Administrative Clerk



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

Middleton Zoning Board of Adjustment
6:30PM
Tuesday, December 17th, 2024
Old Town Hall
200 Kings Highway

- I. Call meeting to order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Review Minutes
- V. New Business

A. Election of Officers

1. Chair
2. Vice Chair

B. New ZBA Rules and Procedure

1. Review

C. Planning Board Meeting

1. December 19, 2024

- a) 6:30pm
- b) Old Town hall

(1) The Planning Board will be reviewing the current Town Ordinance and would appreciate your input as to changes, edits or additions to the ordinance.

Please let John Mullen know if you will be able to attend.

VI. Other

VII. Adjournment

Next Meeting
January 21st, 2024
6:30PM
Old Town Hall
200 Kings Highway

be the official spokesperson for the board and may include a vice chairperson to act in the absence of the chairperson and a clerk to keep records, see that proper notice is given, and take care of other administrative details.

Most boards of adjustment find it convenient to establish a regular monthly meeting which can then be modified as needed to accommodate the number of appeals to be heard. However, the zoning board of adjustment is not required to meet regularly as is the planning board.

RULES OF PROCEDURE

RSA 676:1 Method of Adopting Rules of Procedure

Every local land use board shall adopt rules of procedure concerning the method of conducting its business. Rules of procedure shall be adopted at a regular meeting of the board and shall be placed on file with city, town, or village district clerk or clerk for the county commissioners for public inspection. The rules of procedure shall include when and how an alternate may participate in meetings of the land use board.

State law does not specify the content of the rules of procedure to be adopted by a board of adjustment but does require that every board adopt such rules. Perhaps the most important rule, from the public's perspective, is the time period to be established for appeals of administrative decisions under RSA 676:5, I.

Under RSA 676:1, rules of procedure must be adopted by the board at a regular meeting and placed on file with the city, town or village district clerk for public review. The rules of procedure help to organize the work of the board and lets applicants and abutters know what to expect and how the hearing process will be conducted.

(See Appendix A – Suggested Rules of Procedure for Local Boards of Adjustment.)

The board's rules of procedure should cover issues of internal organization and conduct of public business.

- A. Authority**
- B. Officers**
- C. Members and Alternates**
- D. Meetings**
 - 1. Schedule**
 - 2. Quorum**
 - 3. Disqualification**
 - 4. Order of Business**
 - a) Call to order by the chairperson**
 - b) Roll call**
 - c) Minutes of previous meeting**
 - d) Unfinished business**
 - e) Public hearings**
 - f) New business**
 - g) Communications**
 - h) Other business**
 - i) Adjournment**
- E. Application/Decision Process**
 - 1. Filing application**
 - 2. Notification of public hearing**
 - 3. Conducting the hearing**
 - 4. Decision**
 - 5. Voting**
 - 6. Reconsideration by the board**
- F. Records**



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887
603-473-2261 Middletonnh.gov

ZONING BOARD OF ADJUSTMENT

Rules of Procedure

Adopted December 2024

Authority

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and the Zoning Ordinance and map of the Town of Middleton.

Officers/Clerk

1. A **Chairperson** shall be elected annually by a majority vote of the Board in the month of April. The Chairperson 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. A **Vice-chairperson** shall be elected annually by a majority vote of the Board in the month of April. 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 Chair.

3. All officers shall serve for one year and shall be eligible for re-election.

4. The **Clerk of the Board** shall be appointed by the SelectBoard. His/her term of office shall be indefinite. The Clerk shall publish the required notices of public hearings, and he/she shall notify the petitioner and other appropriate parties of the time and place of such hearings. He/she shall also keep the minutes of the meetings of the Board and the record of public hearings and shall maintain the general files of the Board including those documents pertinent to each case coming before the Board for decision. He/she shall notify the petitioner in each case of the action taken by the Board on each petition.

Members and Alternates

1. Up to **five alternate members** shall be appointed, as provided for by the SelectBoard, 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.

2. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chair to temporarily 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. Once the Board moves into deliberations, alternates shall remove themselves from the table and no longer participate with the Board. 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. At all times, the Chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

3. Members must reside in the community 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 Chair as soon as possible. Members, including the Chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

Meetings

1. **Regular meetings** shall be held at The Old Town Hall, 200 Kings Highway at 6:30 p.m. on the third Tuesday of each month. Other meetings may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.

2. **Quorum:** A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members.

a. The Chair 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.

b. 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.

c. Alternates shall be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the Chair shall select the alternate who has not been activated for the longest time and if there are two or more alternates who meet those criteria, the alternate who has served the longest shall be activated. If two or more alternates still both meet those criteria, the selection shall be made by the flip of a coin.

d. If there are less than five members (including alternates) present, the Chair shall give the option to proceed or not to the applicant. 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.

e. If the applicant opts to postpone due to less than a full Board present, the Board shall announce the time, date, and location of the continued hearing. If the Board cannot determine the time, date, and location of the continued hearing, the Board shall provide new notice to all parties pursuant to RSA 676:7.

3. 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 Chair 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 nonbinding. Determining the threshold of disqualification can be difficult. To assist a member in determining whether 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 may be asked whether he or she:

- a. Expects to gain or lose upon the disposition of the case;
- b. Is related to either party;
- c. Has advised or assisted either party;
- d. Has directly or indirectly given an opinion or formed an opinion;
- e. Is employed by or employs any party in the case;
- f. Is prejudiced to any degree regarding the case; or
- g. Employs any of the counsel appearing in the case in any action then pending in the court. Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall exit the meeting room during the public hearing and during all deliberation on the case.

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

- a. Call to order by the Chair
- b. Roll call 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

Application/Decision

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 Clerk of the ZBA who shall record the date of receipt over his/her signature.

Appeals from an administrative decision taken under RSA 676:5 shall be filed within 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.

b. Prior to the preparation of notices, the Chairperson or a designee will review all applications for completeness. Incomplete applications shall be returned to the applicant. The Chairperson, or a designee, will establish a hearing date for properly completed applications.

c. Each application for a hearing shall be accompanied by a payment of \$100. When the hearing is scheduled, the Clerk will determine the cost to the applicant for sending abutters notices and advertising the public hearing as required by law. The applicant must pay those charges prior to the hearing.

2. Forms: All forms and revisions shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.

3. Public Notice

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

b. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal and shall also be given to other parties deemed by the Board to have special interest.

c. The applicant shall pay for all required notice costs prior to the hearing.

4. Public Hearing

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

a. The Chair shall call the hearing in session and announce 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 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 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. Any person who wants the Board to compel the attendance of a witness shall present his request in writing to the Chair not later than 3 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 Zoning Ordinance and state zoning law.
- n. The hearing on the appeal shall be declared closed.

5. **Deliberations:** The ZBA shall deliberate the merits of the application after the Chair closes the public hearing. ZBA deliberations shall be conducted in a manner to permit all members of the ZBA (including non-voting alternate members) to express opinions, influence voting and ensure that the questions before the ZBA are considered, deliberated, and ultimately decided in an orderly fashion.

6. **Voting:**

a. The ZBA shall determine whether to grant a variance by voting separately on each of the criteria that are set forth in RSA 647:3, I(a)(2). The Chair may assign the task of drafting a motion to a Board member who shall bring a draft motion to the Board at the continuation of the deliberative portion of the meeting for the consideration of the Board. Should a motion result in a tie vote or not receive the necessary three votes to decide in favor of the applicant, the opposite of the failed

the meeting at which the vote is to be taken and shall be placed on file with the Town Clerk and be available for public inspection pursuant to RSA 676:1.

Waivers

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 a waiver would not be contrary to the spirit and intent of the rules.

Joint Meetings and Hearings

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 or the Code Enforcement Officer, and that each Board shall have discretion as to whether to hold a joint meeting with any other land use Board.
2. Joint business meetings with any other land use Board may be held at any time when called jointly by the Chair of the two Boards.
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; and
 - b. If the other Board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other Board is not the Planning Board, then the Zoning Board of Adjustment Chair shall chair the joint hearing; and
 - c. 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
 - d. The other Board shall concur with these conditions.

ADOPTED by majority vote at the Town of Middleton Zoning Board of Adjustment Regular Meeting on December 17, 2024.

AMMENDMENTS:

Robin Willis

Subject: ZBA - Law regarding appointments

There was some discussion at the last meeting about membership. I thought I'd pass along the RSA and an excerpt from the Town of Middleton's Zoning Ordinance that pertains to it.

673:3 Zoning Board of Adjustment and Building Code Board of Appeals. -

I. The zoning board of adjustment shall consist of 5 members. The members of the board shall either be elected in the manner prescribed by RSA 669, or appointed in a manner prescribed by the local legislative body. Each member of the board shall be a resident of the municipality in order to be appointed or elected.

ARTICLE 31 – ZONING BOARD OF ADJUSTMENT

- A. **ESTABLISHMENT.** In accordance with the provisions of NH RSA 673:1, the Town of Middleton hereby establishes a Zoning Board of Adjustment.
- B. **MEMBERSHIP.** In accordance with **NH RSA 673:3**, the Zoning shall consist of **five (5) members**. These five members shall be appointed by the Selectboard and shall serve terms in accordance with **NH RSA 673:5**. Membership shall conform to the multiple board membership requirements of **NH RSA 673:7**.
- The Selectboard shall also appoint up to five (5) alternate members to the Zoning Board of Adjustment. Alternate members shall serve terms in accordance with **NH RSA 673:6**.
- C. **DUTIES.** As per NH RSA 674:33, the Zoning Board of Adjustment shall have the authority to hear and decide upon appeals from administrative decisions, applications for Special Exceptions, and applications for variances from the Zoning Ordinance. All business of the Board shall be conducted in accordance with **NH RSA 674:33** and the Board's adopted procedures.
- D. **FEES.** The Zoning Board of Adjustment is hereby authorized to impose reasonable fees upon an applicant for matters pertaining to requests for Variances (where the applicant is not required or expected to also submit an application to the Planning Board arising out of the same operative facts) and requests for Special Exception for the expense of consultant services to review documents. Any such fees shall be subject to the provisions of **NH RSA 673:16**.

Robin Willis

Robin Willis
Administrative Clerk
Town of Middleton
182 Kings Highway
Middleton, NH 03887
603-473-5208

My normal office hours are, Tuesday, Wednesday and Thursday 9:00 to 5:00

Statutes, codes, and regulations / New Hampshire Revi... / 
/ APPOINTMENT AND ... / Section 673:5 - Term...

N.H. Rev. Stat. § 673:5

Current through the 2024 Legislative Session

Section 673:5 - Terms of Local Land Use Board Members

Previous Section
Section 673:4-c - Housing
Commissions

I.

(a) Except as provided in subparagraph (b), the term of any ex officio member serving on a local land use board shall coincide with the term for that other office; except that the term of the administrative official appointed by the mayor shall terminate with the term of office of the mayor appointing the official, and that the term of the administrative official appointed by the town council,

Next Section
Section 673:6 -

Appoint...
Terms of...
 Download PDF

(b) A city or town council, board of selectmen, or the village district commissioners may determine that the city or town council member, the selectman member or the village district commission member shall be subject to a 4 month or an annual appointment under such conditions as it determines.

II. The term of an elected or appointed local land use board member shall be 3 years. The initial terms of members first appointed or elected to any local land use board shall be staggered so that no more than 3 appointments or elections occur annually in the case of a 7 or 9 member board and no more than 2 appointments or elections occur annually in the case of a 5 member board, except when required to fill vacancies.

III. The term of office for an appointed local land use board member shall begin on a date established by the appointing authority, or as soon thereafter as the member is qualified, and shall end 3 years after the date so established. If no successor has been appointed and qualified at the expiration of an appointed member's term, the member shall be entitled to remain in office until a successor has been appointed and qualified.

RSA 673:5

1983, 447:1. 1996, 42:6; 181:2. 2010, 226:3, *eff. Aug. 27, 2010.*

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