



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

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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

motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.

7. Decisions: The Board shall decide all cases within 90 days of receipt of application and shall approve, approve with conditions, or deny the application. Notice of the decision will be made available for public inspection within 5 business days, as required by RSA 676:3, and will be sent to the applicant by certified mail. The decision shall include specific written findings of fact that support the decision. Failure of the Board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. The notice shall also be given to the Planning Board, the SelectBoard, Assessor, Town Clerk and other town officials as determined by the ZBA.

8. Reconsideration by the Board / Motions for Rehearing: The Board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per *74 Cox Street, LLC v. City of Nashua* [September 21, 2007]. Motions for Rehearing can only be received in the office of the Board during normal business hours. See *Cardinal Development v. Winchester*, 157 NH 710 (2008)

9. Rehearing Procedures: If the Board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the hearing shall follow the procedures set forth in RSA 676:7.

Records

1. The records of the Board, including these Rules of Procedure, shall be made available for public inspection at the Town Municipal Offices in accordance with RSA 673:17.
2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made. The decision shall include specific written findings of fact that support the decision. RSA 676:3
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 5 business days of the public meeting. Approved minutes will be available at the Town Clerk's office and posted on the website in a consistent and reasonably accessible location. RSA 91-A:2 II

Amendments

Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the Board provided that such new rules or amendments are proposed and discussed prior to

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: