

Town of North Hampton, New Hampshire



ZONING BOARD OF ADJUSTMENT

Rules of Procedure

Adopted: November 19, 2003

Amended: August 31, 2010

Effective: August 31, 2010

SECTION 1. AUTHORITY

These Rules of Procedure are adopted by the North Hampton Zoning Board of Adjustment under the authority of New Hampshire Revised Statutes Annotated (RSA), 1983, Section 676:1, Section 676:2 and the North Hampton Ordinance ("**Ordinance**"), as each may be amended from time to time. Unless otherwise described, the "Board" shall mean five (5) members of the Zoning Board of Adjustment except when an Applicant accepts a lesser number, but no less than three (3) and/or, when applicable, such duly designated Alternates ("Alternate Member") assigned on a particular case, session or matter.

SECTION 2: POWERS

These Rules shall govern the procedures by which the Board shall conduct its business. In accordance with RSA 673:1(V), the Board shall also act as the Building Code Board of Appeals. These Rules are adopted to guide the procedures of the Board when acting in either capacity as applicable. The powers of the Board shall be those authorized under RSA 674:33. The powers of the Building Code Board of Appeals shall be those authorized under RSA 674:34.

A. Administrative Appeals.

The Board shall hear and decide appeals if it is alleged there is error in any order, requirement, or decision, or determination made by an administrative official in the enforcement or interpretation of any relevant RSA and/or provision of the Ordinance (including but not limited to actions of the Planning Board pursuant to RSA 676:5 III), with regard to the terms of the Ordinance or any construction, interpretation or application of the terms of the Ordinance implicated in the decision under appeal. The term "administrative official" as used in this Section means any official or board with responsibility for issuing permits or certificates under the Ordinance, or for enforcing the Ordinance, including, without limitation, the Building Inspector, Zoning Administrator, Planning Board, Historic District Commission and Conservation Commission. Appeals from the Planning Board may be heard by the Board *if* the Planning Board, in the exercise of its subdivision or site plan review powers, makes a decision or determination which is based upon the terms of the Ordinance, or upon any construction, interpretation or application of the Ordinance, which would be appealable to the Board as if it had been made by an administrative official.

B. Building Code Appeals.

The Board shall have the authority to vary the application of any provision of the Building Code to any particular case when, in its opinion, the enforcement of the Building Code would be contrary to the spirit and purpose of the Building Code and the public interest. The Board shall have the authority to hear appeals from denials of permits to build. In exercising its powers in such appeals, 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 and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

C. Variances.

The Board shall hear and decide applications for variance from the terms of the Ordinance if (see RSA 674:33):

1. The variance will not be contrary to the public interest;

2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.

b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.¹

D. Special Exceptions.

The Board may authorize special exceptions to the terms of the Ordinance for uses specifically identified in the Table of Uses. The Board may grant such special exceptions in appropriate cases and subject to appropriate conditions so as to be in harmony with the general purpose and intent of the Ordinance. If the Board finds that all the requirements of the Ordinance are met, the special exception, subject to any conditions ordered by the Board, shall be granted. If the applicant does not demonstrate that each of the requirements is met, the Board shall deny the special exception. The Board may attach conditions to the granting of a special exception as may be determined to be appropriate to mitigate the impact of the proposed use on the surrounding properties and to protect the health and welfare of the Town and its residents.

E. Equitable Waiver of Dimensional Requirement.

¹ The Legislature's Statement of Intent: The intent of ... this act is to eliminate the separate "unnecessary hardship" standard for "area" variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, Inc. v. Town of Gilford*, 124 N.H. 126 (1983). SB 147 FN 307:5

When a lot or any other division of land, or structure thereupon, is discovered to be in violation of any dimensional regulations of the Ordinance, the Board shall grant an equitable waiver only if the board makes all of the following findings as more particularly provided in RSA 674:33-a:

1. The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed.
2. The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement.
3. The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.
4. Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected.
5. **OR**, In lieu of the findings in (1) and (2) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected.

SECTION 3: OFFICERS

A. Officers of the Board shall include a Chair, a Vice-Chair and such other officers as the Board may determine. Officers shall serve until they resign, they are no longer Members of the Board, or until their successors have been duly elected.

B. The **Chair** and **Vice-Chair** shall be elected annually by a majority vote of the Board at its first meeting following the North Hampton Town Elections. The Chair shall preside over all meetings of the Board; may act on behalf of the Board on matters specifically authorized by the Board; and, shall affix his/her signature in the name of the Board when so authorized. 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. In the absence, disability or unavailability of both the Chair and Vice-Chair, the primary Board Member present with the most seniority shall exercise the duties of the Chair. In general, the Chair, except as to administrative matters relating to the Board, shall have only such powers as are granted by the Board with not less than three members in concurrence.

C. The Town’s Planning and Zoning Administrator shall perform the duties of **Clerk**. The Clerk shall maintain and preserve a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct by resolution. Provided, however, the Board shall have final discretion over the content of the minutes of its Meetings. A dissenting Member’s comments, or any person providing sworn testimony, may submit written comments, which shall be incorporated as an exhibit to the minutes and may not be excluded.

D. All officers shall serve for one (1) year and shall be eligible for re-election.

SECTION 4: PRIMARY MEMBERS AND ALTERNATE MEMBERS

A. Under the provisions of RSA 669:17, members of the Board shall be elected by ballot at the annual Town elections and shall serve for an elected term of three (3) years, except as provided during the transition period from an appointed Board to an elected Board. All terms of elected

members shall begin at the first meeting following Town elections. Elections and/or appointments shall be staggered in accordance with RSA 673:3 and 673:5, so that no more than two (2) elections or appointments occur annually, except when required to fill vacancies. The commencement term and the holdover provisions must be consistent with the requirements set forth by either Town Meeting or the Select Board.

B. Board members, both Primary and Alternate, must be domiciled in North Hampton, NH. Any Member unable to attend a meeting shall notify the Chair as soon as possible in advance of such Meeting. Members, including the Chair, shall participate in the decision making process and vote to approve or disapprove all motions under consideration.

C. In accordance with RSA 673:6 a minimum of three (3) and up to five (5) Alternate Members shall be appointed by the Select Board until all Primary Members of the Board are all elected officials, and shall serve a term of up to three (3) years. Once the Primary Members are all elected, Alternate Members to the Board will be appointed by majority vote of the Board. Such terms shall be staggered.

D. All Alternate Members shall continue to serve until reappointment or a successor has been appointed. However, no Member shall serve as a hold over for more than ninety (90) days. If at the end of the 90-day holdover period the Select Board has not appointed or reappointed a member, the office shall be deemed vacant.

E. The **Clerk** will prepare a rotating roster that schedules a minimum of one (1) Alternate Member to attend each meeting for the upcoming months. When notified that a Primary Member or scheduled Alternate Member will be absent from a meeting, the **Clerk** will schedule additional Alternate Member(s) to attend the meeting. Alternate Members may not participate in any discussions unless they are requested to sit in place of a Primary Member. Other Alternate Members may attend the meeting as members of the audience.

F. Disqualification of a Board Member is based on jury standards relative to conflict of interest questions apply to Members deliberating and/or voting on an application. If any member finds it necessary to recuse or disqualify himself/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 Member 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 request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding. Either the Chair or the member recusing/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.

G. Vacancies for Primary Board Member(s) or Alternate Member(s), occurring at other than at the expiration of a term, shall be filled by the Select Board until the entire Board (ZBA) is an elected body.

SECTION 5: MEETINGS

A. Regular Meetings of the Board shall customarily be held in the *Town Hall, 231 Atlantic Avenue* at *6:30 p.m.*, on the fourth (4th) Tuesday of each month. The Board normally does not schedule a Meeting in December except when an Applicant chooses to exert their rights under RSA 676:7.II. Other, Special or Work meetings may be held on the call of the Chair, or at the request of three (3) primary Board Members, provided public notice and notice to each member is given in accordance with RSA 91-A:2, II. The Board by majority vote may alter its Regular Meeting date schedule, as appropriate, to accommodate Holidays, or other scheduling anomalies.

B. Every attempt will be made to have five (5) Members at each public meeting. If necessary, Primary Members may be augmented by one or more Alternate Members, designated by the Chair, to achieve a five (5) member board to conduct Board hearings and deliberations. When an Alternate has been seated for a Primary Member due to recusal, such Alternate Member shall sit to the extent possible for the entire application, including any and all appeals.

C. A quorum for all meetings of the Board shall be three (3) members, including Alternate Members sitting in the stead of Primary Members. If any Primary Member is absent from any meeting or hearing, or disqualifies himself/herself from sitting on a particular case, the Chair shall designate one, or more, of the Alternate Members to sit in place of the absent or disqualified Member, and such Alternate Member shall be in all respects a full member of the Board while so sitting.

D. The Board will make every effort to ensure that a full five (5) member board is present for the consideration of any appeal/petition. If, for any reason, there are fewer than five (5) Primary Members or Alternate Members, the Applicant/Petitioner shall have the discretion to accept less than the full five (5) member board, or to defer the case, without prejudice, to a date certain, with the understanding that an affirmative vote of three (3) members is required to decide any appeal and that action by a reduced Board is not, in and of itself, grounds for a rehearing.

E. All meetings of the Board shall be open to the public except for Non-Public Sessions which shall be held only in accordance with RSA 91-A:3 (the Right-to-Know Law). Before entering into a Non-Public session, the Board shall cite one of the specific statutory reasons for the Non-Public session by a motion with the role call vote to be recorded. While in Non-Public session, the Board is limited to consideration of the subject which was the reason for entering the Non-Public session. Minutes of Non-Public sessions must be maintained and be disclosed to the public as prescribed by statute, unless two-thirds (2/3rds) of the members vote to seal the minutes after a determination that divulgence of the information likely would affect adversely the reputation of any person other than a member of the Board itself, or render the proposed action ineffective.

F. An "Emergency Meeting" of the Board, as such term is defined in NH RSA 91-A:2, may be convened in the manner prescribed by such statute.

G. The Chair may cancel a Regular Meeting if there are no applications pending for reasons of: (1) no filings, or (2) request(s) to withdraw, or otherwise defer a Public Hearing on an Application has been filed by such Applicant.

H. Every attempt will be made by the Board to receive testimony at a Public Hearing and render a decision on all Applications in a timely manner. If, in the opinion of the Chair, it appears that all of the business of a Regular Meeting cannot reasonably be completed at a meeting before 10:30 p.m., and with the concurrence of a majority of the Board members present, the Board may opt to defer action on such Application(s), as to which business cannot be completed, to a date certain to be decided by the Board at the Meeting. In such event, and as to such matters, the Meeting shall be deemed recessed to such future date, location and time and need not require republication.

I. The Board will not ordinarily commence consideration of an Application, or other matter filed by an Applicant or other member of the public, after 9:30 p.m. unless a majority of Board members present shall agree. The Board may waive this provision by a majority vote. However, if the applicant, or any abutter, object to the Board hearing a specific case after 10:00 p.m., then the Board will table that application until the next regularly scheduled meeting.

J. All Meetings are tape-recorded and may be televised on Channel 22. All recordings shall be preserved until the Board determine that such record may be destroyed provide that such period of time shall never be less than that prescribed by statute.

K. All persons appearing before the Board shall be sworn to the accuracy, completeness and truthfulness of both their testimony, and evidence submitted by them to the Board according to NH RSA 673:15. The Chair will advise those indicating their intention to give testimony to disclose any personal, business or other similar relationship that may affect the juror standard of a Board Member.

L. Any member of the Public shall be permitted to observe, record, film and/or videotape meetings so long as they are not disruptive and do not unreasonably interfere with the conduct of the Board's business. In the event of disruptions, the Chair, with the consent of a majority of the Board, may order the offending person(s) to leave the meeting room and/or cease the activities causing the disturbance.

M. Order of Business. The Chair reserves the right to modify the order of agenda items as appropriate; however, the order of business for regular meetings shall normally be as follows:

1. Call to order by the Chair.
2. Pledge of Allegiance (voluntary per intent of RSA 194:15-c)
3. Roll call/Introduction of members.
4. Zoning Administrator's report to include proper public notice and notice to abutters.
5. Swearing/Affirmation of witnesses; and the juror standard caution (per intent of RSA 673:14 & 673:15).
6. Preliminary matters: Meeting Conduct Explained
 - a. A case summary is read.
 - b. Applicant explains petition for relief and justifies.
 - c. Meeting opened for public comment with rebuttal.
 1. Persons, other than Members of the Board, shall be recognized to address the Board in the order determined by the Chair, and from the podium after clearly stating their name, address, and indicate whether he/she is a party to the case or an agent or counsel of a party to the case.

2. The speaker shall not enter into any debate with anyone present and shall speak only to the subject matter then being heard.
 - d. After comment from the public, the public session will be closed.
 - e. Preceding any recess, the Chair shall state the time and place for reconvening. Said recess should normally not exceed 15 minutes, during which no business will be discussed by the Board.
 - f. Board deliberates and renders decision.
7. Minutes of previous meeting: The Minutes of previous meeting(s) shall normally be presented for approval by the Board. The Chair shall call for any corrections to the Minutes. If there are none, a motion shall be made to approve the Minutes as presented. If there are corrections, the corrections shall be handled by general consent after which, a motion shall be made that the Minutes are to be approved as amended (see also Section 3 C).
 8. Unfinished Business & Public hearing/meeting.
 9. New business & Public hearing/meeting.
 10. Communications/correspondence and miscellaneous.
 11. Other business.
 12. Adjournment: The Board shall adjourn each meeting to its next scheduled meeting or to a special meeting specifying time, date, and place.

SECTION 6: APPLICATION/DECISION

A. Time Limits.

An Applicant aggrieved by a decision of an administrative official shall have a time limit of forty-five (45) calendar days from the date of such decision in which to file an appeal, except when the Board may vote to extend such appeal period for good cause shown and when the rights of interested parties will not be unduly prejudiced. The time limit begins on the first day after the decision and ends at close of business on the 45th day, unless Town Offices are closed that day, making the deadline at the close of business on the next business day.

B. Application for Relief Form.

1. Each Application for Relief to be heard by the Board shall be submitted on forms approved by the Board and available from the Zoning Administrator.
2. The application shall be presented to the Zoning Administrator who shall record the date and time of receipt. The application shall set forth in reasonably complete detail all matters for which relief is being requested and the reasons supporting same.
3. All prior actions by the Board shall be cited and copies of decisions or orders attached. Relief can not be granted by the Board unless specifically requested. Except for good cause shown, the Board will not normally grant relief unless the Applicant is in substantial compliance with all prior grants of relief, and/or conditions attached thereto, affecting the subject parcel; and, further, demonstrates to the satisfaction of the Board that all taxes, assessments, or fees due or owing to the Town have been timely paid.
4. At each meeting, the Zoning Administrator shall present to the board all applications received at least 25 calendar days before the date of the meeting.

5. Applicants shall enclose an original and thirteen (13) copies of all communications to the Board. All original communications/documents shall be kept by the Zoning Administrator in the permanent Town Records.
6. All expenses incurred by the Board in connection with any Application shall be borne solely by the Applicant, unless otherwise waived by the Board for reason of special circumstance upon written request of an Applicant (RSA 676:4,I(g)). The Applicant may request a rebate of the recording fee if the application is withdrawn (see Application Instructions).
7. The Board may request that the Applicant, at the Applicant's expense, to provide additional technical information, and/or testimony by qualified experts, deemed necessary by the Board for it to make an informed decision (RSA 673:16.II).
8. Fees due must be submitted at the time of the filing of the Application or the Application will not be accepted. If any remittance is dishonored by a financial institution, the filing will be deemed null and void.
9. Abutters, other persons with a direct interest in the Application, and Town Officials, or their agents, may submit evidence relating to the Application.
10. All application forms, instruction, and revisions prescribed shall be adopted by resolution of the board and shall become part of these Rules of Procedure.
11. The Application submitted by an Applicant shall require written acknowledgement by the Applicant/Designee of receipt of a copy of these Rules of Procedure.

C. Public Notice.

1. Newspaper publications of Notice as prescribed by statute shall be made in the Portsmouth Herald and/or Hampton Union.
2. Public notice of public hearings on each application shall be posted at the Town Clerk's office and Public Library not less than five days (5) before the date fixed for the hearing.
3. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the Ordinance concerned, the type of appeal being made and the date, time and place of the hearing. The posting notice shall be in the name and/or office of the Zoning Administrator.
4. Personal notice shall be made by Certified Mail with return receipt and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the planning board, city/town clerk and other parties deemed by the Board to have special interest, including but not limited to the Conservation Commission and the Heritage Commission. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
5. The applicant shall pay for all required notices costs in advance.
6. Each Applicant at the time of filing an Application for Relief shall receive from the Zoning Administrator a sign to be posted on the premises, and visible from the nearest street, by the Applicant notifying the Public that such parcel or lot is the subject of a Board action. Such sign shall remain in place until the Application receives final action.

D. Site Visits.

1. Upon the filing an Application for Relief, an Applicant expressly agrees that any Member of the Board may, during normal business hours, visit, enter upon, inspect, or make observations of the site which is the subject of the Application for Relief; provided however, that such visit(s) shall be scheduled with the Applicant in advance and shall not include entry into the primary dwelling without further approval of the Applicant.
2. Members are encouraged to make such site visits before the public meeting, or, the Board, in its discretion may vote to continue the hearing of an application to allow members an opportunity to perform a site visit. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board.
3. At no time shall more than two (2) members of the Board be present simultaneously during a site visit unless the site visit has been called as a public meeting and proper public notice as required by New Hampshire statutes has been given. Other than observations of the site, no evidence shall be taken; and there will be no discussions of the evidence or deliberations at such site visits.

E. Public Hearing.

1. All persons identified in RSA 676:6 as persons who have an interest in a matter shall receive notification of a Public Hearing prepared by the Zoning Administrator as herein prescribed.
2. Unfinished Business and New Business shall ordinarily be considered in the following manner:
 - a. The Application summary is read;
 - b. Applicant and/or Designee present their case;
 - c. Those in favor speak;
 - d. Those opposed speak;
 - e. Applicant and/or Designee may rebut opposition testimony;
 - f. Those opposed may rebut any new rebuttal testimony;
 - g. If there are not further questions, the Public Hearing on that docketed item is closed;
3. The Board will hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Ordinance and state zoning law.
4. Any Board member may, at any time, request of the Chair the right to make inquiry of the Applicant, the Applicant's representative, or any other persons speaking to the matter.
5. Other persons, including abutters, whom the Board deems appropriate, may be recognized to speak by the Chair at the Public Hearing and/or may testify in person at the Public Hearing. Persons requesting to speak shall direct all comments to the Chair. All speakers shall state their name, address and interest in the case for the record. The Chair may refer comments or questions to any other Board member for response.

F. Deliberations.

When a motion related to the disposition of a case is made and seconded, it shall be stated by the Chair before debate. At the request of the Chair, or any Member of the Board, the motion shall be in writing. A motion may not be withdrawn or amended by the mover without the consent of the second and approval of a majority of the Board. Determinations on any matter before the Board shall require the concurrence of a majority of the Members present and voting. A tie vote of the members present and voting constitutes no action. If the Board is unable to take action, it shall continue the matter to a date certain for further consideration.

G. Decisions.

1. In its discretion, the Board may reserve making a decision on an Application on the night of the Public Hearing based on the need to seek additional evidence or testimony, in which case the matter will be continued to a date certain.
2. An abstention from voting by a Board Member is discouraged especially when it results in a tie vote of the Board without a sufficient cause or reason.
3. The board shall endeavor to decide cases within 30 days of the close of the public hearing, or any extensions or continuations thereof, and shall approve, approve with conditions, or deny the appeal. The Chair will notify all present of the decision of the board and their rights of appeal. Notice of the decision will be made available for public inspection within the time limits as specified by RSA 676:3, and will be sent to the applicant by Certified Mail. If the appeal is denied, the notice shall include the reasons therefore.
4. Time limits for an Applicant to take action to effectuate the subject matter of an Application, if approved, may be imposed by the Board as a condition to such approval. Such determinations will be made on a case-by-case basis, as the Board deems necessary and appropriate.
5. The Board has the authority to attach reasonable conditions in the granting of any relief. These reasons include, but are not limited to, those necessary to preserve the spirit of the Ordinance. The placing of conditions may also be designed to protect the adjacent landowners, preserve the essential character of neighborhoods, secure the basic values of the master plan, and attempt to provide that substantial justice is done. However, the condition or conditions must be related to the use of the land and not to the personal circumstances of the applicant. Reasonable conditions shall also include the authority to make the decision conditional on placing on deposit with the Town, in the manner provided by RSA 673:16 (II), sums of money to ensure compliance with such conditions. The conditions must be adhered to otherwise the granting of the appeal will be revoked. If the Board finds it necessary to attach conditions they must be spelled out in detail in the Board's decision. Pursuant to RSA 676:15 and 676:17 the Board may seek Injunctive Relief, a Fine, or both for the violation of a condition.

H. Reconsideration by the Board.

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.

SECTION 7: BOARD COMMUNICATIONS

A. All communications to the Board shall be in writing and directed to:

*Zoning Board of Adjustment
Attn: Zoning Administrator*
Town of North Hampton
233 Atlantic Avenue, 2nd Floor
North Hampton, NH 03862*

* Any such communications must be received by the Zoning Administrator during normal business hours.

B. E-mail communications(s) or other form of electronic communications(s) shall not be deemed an official communication to the Board until it is printed in hard copy and received by the Board. E-mail as well as written communications shall be considered unsworn testimony until attested by its author.

C. Persons wishing to address the Board and/or present evidence are encouraged to submit their comments in writing, and signed, to the Board as soon as possible in advance of the Meeting at which the matter is to be considered. As a courtesy, the Zoning Administrator shall notify the Applicant that a copy of such correspondence can be obtained at the Town Offices during normal business hours.

D. All communications from an Applicant, abutter, or interested person shall be available to the Board by placement in the respective mailbox of each member at the Town Office within twenty-four (24) hours of receipt by the Zoning Administrator. Thirteen (13) copies of any such material(s) shall be submitted, and shall be distributed to each primary Board Member and/or Alternate Member. In addition, one copy shall be placed in the Conservation Commission mailbox at the Town offices for any applications that involve their jurisdictional interests.

E. Primary Board Members and Alternate Members shall bear in mind the “quasi-judicial” nature of their duties and shall take efforts to avoid and/or report any attempts by Applicant(s), or other interested persons or parties to hold ex parte communications.

F. Other than for scheduling, administration, or exchange of publicly available documents not produced or generated by or for the Board, primary Board Members and/or Alternate Members shall not communicate by e-mail as to the Board’s active applications and/or decision making.

SECTION 8: RECORDS

A. The Board shall electronically record all of its proceedings and, shall keep such recordings for an indefinite period so as to ensure existence of same at the time of any subsequent appeal(s) or court action(s), but in no case less than that required by law. Any person desiring a transcript of the recording must pre-pay the expense of the transcription performed at his/her request and must provide one (1) copy for the Town’s Permanent Records. Any person engaging a stenographer to record a meeting shall provide a copy of such transcript at their sole expense to each Full-Time Board Member and Alternate Member; and shall make a copy available to any other interested person or party who requests same in writing, and who agrees to bear all expenses associated with the copying of same by Applicant. Any person desiring a copy of the Board’s electronic recording must make their own copy in the presence of the Zoning Administrator.

B. A copy of all newspaper and public notices shall be filed and retained in accordance with Town record keeping requirements.

C. The records of the Board shall be kept by the Zoning Administrator and made available for public inspection at the Town Offices, 2d floor, in accordance with RSA 673:17.

D. Final written decisions will be sent by Certified Mail to the Applicant and be placed on file available for public inspection within time limits by statute [RSA 676:3]. Such Decision Letters shall also be recorded at the Registry of Deeds.

SECTION 9: AMENDMENTS/ WAIVERS

A. These Rules of Procedure may only be amended or revised by a super majority vote, meaning four (4), of the primary Board Members, and unless waived by a super majority, and only upon due notice to all Board members.

B. Except for A above, 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. The Board may, upon motion made by any Board Member, and by majority vote unless otherwise provided, waive compliance with any provision of these Rules.

SECTION 10: JOINT MEETINGS AND HEARINGS

RSA 676:2 provides that the Board may hold joint meetings or hearings with other land use boards, including the planning board. Each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

**Rules of Procedure
RECORD OF CHANGES**

A. Change 1 was approved on September 22, 2009

- 1.1 Page 3, Section 3B, line 2: insert “first” before scheduled meeting and delete: ‘for the month’.
- 1.2 Page 4, Section 4A, line 5: delete ‘normally in April’.
- 1.3 Page 6, Section 5C, add sentence: “When an Alternate has been seated for a Primary Member due to recusal, such Alternate Member shall, to the extent possible, sit for the entire application, including any and all appeals.”
- 1.4 Application Instructions, Page A-3, Section 2A to read:

A. Appeal from an Administrative Decision: Use Form 2 – Petition for Administrative Appeal (file with Form 1):

If you have been denied a building permit or are affected by some other decision regarding the administration of the North Hampton Zoning Ordinance, including a decision of the Planning Board, and you believe that the decision was made in error under the provision(s) of the ordinance, provided such appeal is permitted by statute, you may appeal the decision to the Zoning Board of Adjustment within 45 days from the date of the order from which the appeal is taken (see Rules of Procedure, Section 6A, for specific rules on timeliness).

If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.

- 1.5 Application Instructions, Pages A-3, A-4 and A-5, Sections 2A, 2B, 2C, 2D – insert Use Form 1 – Application for Relief.

B. Change 2 was approved on December 15, 2009.

- 2.1 Section 2.C. Variances: Change wording to reflect changed RSA 674:33 and legislative footnote, effective January 1, 2010.
- 2.2 Instructions for Applicant, Section 2B. Variance: Change wording to reflect changed RSA 674:33, effective January 1, 2010.
- 2.3 Instructions for Applicant, Variance Work Sheet (page B-6): Change wording to reflect changed RSA 674:33 and legislative footnote, effective January 1, 2010.
- 2.4 Instruction for Applicant, Section 2: Types of Appeals, subparagraphs A, B, C and D: change to add clarification to file a Form 1 with each of the other forms.
- 2.5 Revise the 2010 ZBA Meeting Schedule (Appendix A. Attachment 2) to include a date of December 14, 2010, with a submittal deadline of November 30, 2010.

C. Change 3 was approved on February 10, 2010.

- 3.1 Page B-6, Variance Work Sheet, was completely revised to reflect changed RSA 674:33.

D. Change 4 was approved on July 27, 2010.

- 4.1 Page A-1 Instructions for Appeals, 1.d., change 11 copies to 13 copies.
- 4.2 Section 6.B.5., change 11 copies to 13 copies.
- 4.3 Section 7.D., change 11 copies to 13 copies.

E. Change 5 was approved August 31, 2010.

- 5.1 Section 5.A., change from Mary Herbert Room to Town Hall, 231 Atlantic Ave.
- 5.2 Appendix A, attachment 2 Meeting Schedules and Deadlines from Mary Herbert Room to Town Hall, 231 Atlantic Ave.