

# *Little Boar's Head District of North Hampton, NH*

## **ZONING BOARD OF ADJUSTMENT**

### **RULES OF PROCEDURE**

#### **Purpose and Authority**

The Little Boar's Head (LBH) Zoning Board of Adjustment (ZBA or "Board") issues these Rules of Procedure to guide all Board functions such as conduct of meetings, notices, duties of officers, conflict of interest, etc.

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, [Chapter 676:1](#), and the zoning ordinance and map of the Little Boar's Head District, North Hampton, New Hampshire.

#### **Officers**

**A Chair** shall be elected annually by a majority vote of the Board in the month of September. The Chair shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

**A Vice-Chair** shall be elected annually by a majority vote of the Board in the month of September. 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.

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

#### **Members and Alternates**

**Members and Alternate Members** of the ZBA are appointed by the Commissioners of the Little Boars Head District. The Board will have 5 primary members. Openings will be filled as they occur. Members will typically serve an initial term of 3 years and appointments are typically made following the LBH annual meeting at the start of September.

Up to **three alternate members** shall be appointed and are encouraged to 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.

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 that are not recused may participate in discussion, but not make motions or vote 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.

**Members must reside in the LBH district** 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 Vice Chair, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

### Meetings

**Regular meetings** shall be held at North Hampton Town Hall at 6:30 PM on the second Thursday of each month unless otherwise noted on the public notice. 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](#). If there is no pending business, the Chair may cancel a regular meeting or other scheduled meeting with 5 day notice. Dates for receipt of applications ahead of meeting dates will be published at least once per year on the town web site, see Exhibit A.

**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 themselves 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 that criteria, the alternate who has served the longest shall be activated. If two or more alternates still both meet that 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](#).

**Disqualification:** If any member finds it necessary to disqualify themselves from sitting in a particular case, as provided in [RSA 673:14](#), they 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 non-binding.

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not 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 themselves before the beginning of the public hearing on the case shall announce the disqualification.

### **Order of Business**

The order of business for regular meetings shall be as follows:

- a. Call to order and roll call by the Chair.
- b. Minutes of previous meeting.
- d. Unfinished business.
- e. Public hearing of first scheduled case
- f. Deliberations on first scheduled case
- g. Public hearings followed by deliberations of additional scheduled cases
- h. New business.
- i. Administration, scheduling and communications
- j. Adjournment.

(Note: Although this is the usual order of business, the Board may wish to hold the public hearings immediately after the roll call in order to accommodate the public.)

## Application/Decision

### Applications

Applications for Appeals to the LBH ZBA should be made in accordance with the LBH ZBA Applicant's Package. This document is prepared and maintained by the ZBA and is available to the public upon request and posted at the LBH section of the Town North Hampton website ([www.northhampton-nh.gov/village-district-little-boars-head](http://www.northhampton-nh.gov/village-district-little-boars-head)). The Applicant's Package includes all applicant-related forms required and referenced by these Rules of Procedure.

Applications is made to the Little Boar's Head Zoning Board of Adjustment, Town of North Hampton Town Offices, 2<sup>nd</sup> Floor, 233 Atlantic Avenue, North Hampton, NH 03862.

At least 9 days before each hearing, the Chair shall present to the Board all applications received and noticed for the hearing.

Applications must be received by the date noted on the LBH ZBA Official Meeting Calendar. Applications received after this date shall be placed on the subsequent meeting's agenda.

### Public Notice

- a. Public notice of public hearings on each application shall be given in the manner prescribed in RSA 676:7. Notice will be made in the Portsmouth Herald, and posted at the North Hampton Town Offices and at the notice board at the Union Chapel, Willow Avenue, and will be provided to the North Hampton town administrator to be posted at the LBH section of the town of North Hampton website.
- 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 the Planning Board and other parties deemed by the Board to have special interest.
- c. The applicant shall pay for all required notice costs in advance.

**Notice to Abutters:** Notice shall be made by certified mail, return receipt to all abutters not less than five calendar (5) days before the date of the hearing. Notice shall also be given to the LBH Planning Board, LBH Zoning Compliance Officer, and other parties deemed by the Board to have special interest.

### Public Hearing

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

- a. The Chair shall call the hearing for a given case into session
- b. The Chair or Vice Chair shall read the application and report on how public notice and abutter notice were given.
- c. The ZBA 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.
- d. The applicant shall be called to present their appeal.
- e. Those appearing in favor of the appeal shall be allowed to speak and present evidence.
- f. Those in opposition to the appeal shall be allowed to speak and present evidence.

- g. The applicant and those in favor shall be allowed to speak in rebuttal.
- h. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- i. Each person who appears shall be required to state their name and address and indicate whether they are a party to the case or an agent or counsel of a party to the case.
- j. Members of the Board may ask questions at any point during testimony.
- j. Any member of the Board, through the Chair, may request any party to the case to speak a second time.
- k. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
- 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 Chair shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.
- n. The public hearing on the appeal shall be declared closed and the Board will proceed into Deliberations.

**Deliberations:** During deliberations, non-Board-members may remain in attendance but may not speak unless directed to by a Board member as approved by the Chair. 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. The Chair may also refer comments or questions to any other Board member for response. 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. If the Board is unable to take action, it shall continue the matter to a date certain for further consideration.

**Applicant's Withdrawal or Request for Continuation:** If the Board decides to continue an application due to time constraints or the need for additional information from an applicant; a date, time and location will be established. If the applicant withdraws without prejudice, or continues their application more than once, they will be responsible for the application and abutter notification fees.

**Voting:** 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 3 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.

**Decisions:** The Board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. 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 by the Chair to the applicant by mail and email. If the appeal is denied, the notice shall include the reasons. The

notice shall also be given to the LBH Planning Board and other officials as determined by the Board. Notice shall be posted at the North Hampton Town Offices, at the message board at the union Chapel, and on the LBH section of the North Hampton town website.

**Conditions:** The Board has the authority to attach reasonable conditions in the granting of any relief. The reasons for conditions include, but are not limited to, those necessary to preserve the spirit of the ordinance, such as conditions 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. Reasonable conditions shall also include the authority to make the decision conditional on placing on deposit with the town/district, 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.

**Time Limits:** Time limits for an applicant to meet conditions of approval may be imposed by the Board as a condition of such approval. Such determinations will be made on a case-by-case basis as the Board deems necessary and appropriate.

**Administrative Appeal:** An applicant aggrieved by a decision of an administrative official has the right to appeal under RSA 676:5. See the LBH ZBA Applicant's Package for instructions. The LBH Commissioners, or any party affected, have similar rights to appeal the decision. The Motion for Rehearing may be in the form of a letter to the Board. The motion must be made within 30 days of the decision and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

**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 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. Town of Winchester](#) [October 8, 2008].)

**Motions for Rehearing:** 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 rehearing shall follow the procedures set forth in [RSA 676:7](#).

**Expenses:** 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 676:5, IV). The Board may request that the applicant, at the applicant's expense, 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). 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.

## Records

The records of the Board shall be kept and made available for public inspection upon request in accordance with [RSA 673:17](#).

Final written decisions will be placed on file, posted to the LBH section of the town of North Hampton website, and be available for public inspection within 5 business days after the decision is made. [RSA 676:3](#)

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 15 business days of the public meeting. [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. Rules of Procedure include the LBH ZBA Applicant's Package referenced herein.

## 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

[RSA 676:2](#) provides that the ZBA may hold joint meetings or hearings with other "land use boards," including the Planning Board, the Heritage Commission, the Zoning Compliance Officer, and the inspector of buildings, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

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.

A public hearing on any appeal to the ZBA 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 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 in these conditions.