

**SECTION 1: AUTHORITY**

These Rules of Procedure are adopted by the North Hampton Zoning Board of Adjustment (“Board”) under the authority of New Hampshire Revised Statutes Annotated (RSA), 1983, Section 676:1, Amended 2010, Section 676:2 and the North Hampton Zoning Ordinance (“Ordinance”), as each may be amended from time to time. The “Board” shall mean five (5) regular members of the Zoning Board of Adjustment or, when applicable, designated alternates (“alternate member”) sitting in place of absent or disqualified regular members on a particular case, session, or matter; except when an applicant accepts a lesser number, but no less than three (3). A regular member of the Board is an elected member or a person appointed to permanently fill the seat of a vacant elected position until the next regular municipal election. A sitting member of the Board is a regular member participating in consideration of a matter before the Board or an alternate member designated to sit for a regular member at a specific meeting.

**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. 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. These rules are adopted to guide the procedures of the Board when acting as the Zoning Board of Adjustment or the Building Code Board of Appeals.

**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 provision of the Ordinance.

**B. Variances.**

The Board may authorize a variance from the terms of the Ordinance if:

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 subparagraph (5), "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.

c. The definition of "unnecessary hardship" set forth in subparagraphs (a) and (b) 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. (RSA 674:33)

C. Special Exceptions.

The Board may authorize special exceptions to the terms of the Ordinance for uses specifically identified in the table of uses as needing a special exception. The Board may grant such special exceptions in appropriate cases which satisfy Ordinance criteria. The Board may subject approval of a case to appropriate conditions so as to be in harmony with the general purpose and intent of the Ordinance.

D. Equitable Waiver of Dimensional Requirement.

When a lot or any other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by the Ordinance, the Board may grant an equitable waiver only if the Board makes all of the findings as provided in RSA 674:33-a.

E. Building Code Appeals.

The Building Code Board of Appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or rules adopted thereunder has been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The Board shall have no authority to waive or grant variances to requirements of the state building code or the state fire code. (RSA 674:34)

### **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 regular 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 sitting members in concurrence.

C. The Town's Planning and Zoning Administrator shall perform the duties of Recording Secretary. The Recording Secretary shall maintain and preserve a record of all meetings, transactions, and decisions of the Board. 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: REGULAR MEMBERS AND ALTERNATE MEMBERS**

A. Under the provisions of RSA 669:17 and RSA 673:5, elected 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. All terms of elected members shall begin upon their election and qualification for office and shall end upon the election and qualification of their successors. Terms of appointed members shall be implemented in accordance with RSA 673:5 and 673:12. Terms of regular members shall be staggered in accordance with RSA 673:5 and 673:6, so that no more than two (2) elections or appointments occur annually, except when required to fill vacancies.

B. Board members, both regular and alternate, shall be a resident of North Hampton, NH. Any member unable to attend a meeting shall notify the Planning and Zoning Administrator, who will then in turn notify the Chair as soon as possible in advance of such a meeting. Regular members, including the Chair, and alternate members designated to sit for an absent or disqualified regular member shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

C. In accordance with RSA 673:6, up to five (5) alternate members may be appointed by the majority vote of the sitting members of the Board and shall serve a term of three (3) years. Such terms shall be staggered.

D. The Recording Secretary 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 regular member or scheduled alternate member will be absent from a meeting, the Recording Secretary will schedule additional alternate member(s) to attend the meeting. Alternate members may not participate in any discussions from the audience in their role as alternate members of the Board unless they are designated to sit on the Board in place of a regular member. Alternate members may attend the meeting in the audience as members of the general public and participate in the same manner as other members of the general public.

E. Disqualification of a board member is based on jury standards relative to conflict-of-interest questions and applies 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 designated 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 sitting 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.

F. Vacancies for regular board member(s) or alternate member(s), occurring other than at the expiration of a term, shall be filled as described under the conditions set forth in Section 11: Vacancy Administrative Procedure.

## **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 (4<sup>th</sup>) 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 676:5-7. Other special or work meetings may be held on the call of the Chair, or at the request of three (3) regular 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. A quorum for all meetings of the Board shall be three (3) members, including alternate members sitting in the stead of regular members. If any regular members are 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 regular members for that meeting only. While sitting in place of absent or disqualified regular members, alternate members shall in all respects have the same responsibilities and authority as a regular board member. An alternate member may only participate in the place of a regular member if the regular board member is absent or has disqualified himself/herself. (RSA 673:11)

C. If a particular alternate member has been seated for a particular case due to a regular member absence or disqualification at a particular meeting and any regular member is absent or disqualified at a subsequent meeting considering that same case, then the Chair should designate that same alternate member to sit on the Board, if possible, for consideration of that same case at that one subsequent meeting. However, if all regular members are in attendance at a meeting and intend to participate in consideration of a particular case, an alternate member shall not be seated even if a particular alternate member was seated for the same case at a previous meeting.

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, the Board consists of fewer than five (5) regular members and/or alternate members designated to sit, 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 within the time limits prescribed by NH RSA's, with the understanding that a concurring vote of three (3) members is required to take action on 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.

F. Except in an emergency, a quorum of the Board shall be physically present at the location specified in the meeting notice as the location of the meeting. The determination that an emergency exists shall be made according to the requirements of RSA 91-A:2.

G. The Chair may cancel a regular meeting if there are no applications pending for reasons of no filings or request(s) to withdraw.

H. The Board will not ordinarily:

1. commence consideration of an application, or other matter, after 9:30 p.m. or
2. proceed with further consideration of an application, or other matter, 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 10:00 p.m. unless a majority of sitting board members present shall agree to waive this provision by a majority vote.

I. If the applicant, or any abutter, object to the Board hearing a specific case after 10:00 p.m., then the Board will continue that application to a date certain.

J. If consideration of a case has been continued as the result of provisions indicated in Section 5, subsections H and/or I above, then the case shall be continued to a date certain:

1. within 45 days of the receipt of the notice of appeal as required by RSA 676:7.II if consideration of the case at a public hearing has not commenced or
2. within 90 days of the receipt of the notice of appeal as required by RSA 674:33.VIII, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable if consideration of the case at a public hearing has commenced.

K. In some situations, the date certain indicated in Section 5, subsection J above will be the next regularly scheduled meeting date. However, the Board may be required to schedule a special meeting date with proper noticing in order to be in compliance with the NH RSA time limit requirements indicated in Section 5, subsection J, 1. and 2. above.

L. Board meetings are generally broadcast live on Channel 22 and/or recorded. All recordings shall be preserved as prescribed by applicable statutes.

M. 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 as authorized by 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.

N. 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.

O. 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. Introduction of regular members and alternate members in attendance.
4. Recording Secretary's report to include proper public notice and notice to abutters.
5. Swearing/Affirmation of witnesses.
6. 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).
7. Preliminary matters: meeting conduct explained
8. Unfinished business & public hearing/meeting.
9. New business & public hearing/meeting.
10. Public hearing/meeting process:
  - a. A case summary is read.
  - b. Applicant explains petition for relief and justifications.
  - c. Meeting opened for public comment with rebuttal. Persons, other than members of the Board, shall be recognized to address the Board, in the order determined by the Chair, from the podium after clearly stating their name and address and indicating whether he/she is a party to the case or an agent or counsel of a party to the case.
  - d. There will be a follow-up question and answer period by Board members.
  - e. The speaker shall not enter into any debate with anyone present and shall speak only to the subject matter then being heard.
  - f. After comment from the public, the public session will be closed.
  - g. 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.
  - h. The Board deliberates and renders decision.
11. Communications/correspondence and miscellaneous.
12. Other business.
13. 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 AND DECISION**

### **A. Time Limits.**

An applicant aggrieved by a decision of an administrative official shall have a time limit of thirty (30) calendar days from the date of such decision in which to file an appeal. The time limit begins on the first day after the decision and ends at the close of business on the 30<sup>th</sup> 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 Planning and Zoning Administrator.

2. The application shall be submitted by the date indicated on the submittal deadline schedule adopted by the Board. The application shall be presented to the Planning and 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 cannot 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.

4. The Planning and Zoning Administrator shall place all applications and appeals into the regular members' and alternate members' mailboxes not later than 14 calendar days prior to a scheduled meeting and will notify each member to that effect via email when accomplished.

5. Applicants shall enclose an original and fourteen (14) copies of all communications to the Board. All original communications/documents shall be kept by the Planning and 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.

7. 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 676:5.IV-V).

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, instructions, and revisions prescribed shall be adopted by resolution of the Board.

11. The application submitted by an applicant shall require written acknowledgement by the applicant 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 Offices, Town Clerk's Office, and the Town Website not less than five days (5) before the date of a public hearing or meeting.
3. Public 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.
4. Personal notice shall be made by certified mail with return receipt to all abutters and others as required by RSA 676:7 not less than five (5) days before the date of the hearing. Notice shall also be given to other parties deemed by the Board to have special interest, including but not limited to, the Planning Board, Town Clerk, the Conservation Commission, and the Heritage Commission. Said notices shall contain the same information as the public notice.
5. The applicant shall pay for all required noticing costs in advance.

#### D. Public Hearing.

1. All persons identified in RSA 676:7 as persons who have an interest in a matter shall receive notification of a public hearing prepared by the Planning and Zoning Administrator as herein prescribed.
2. The public hearing shall be held within 45 days of the receipt of the notice of appeal. (RSA 676:7.II) The Board will hear any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Ordinance and State of New Hampshire law.
3. Any sitting board member may, at any time, request of the Chair the right to make an inquiry of the applicant, the applicant's representative, or any other persons speaking to the matter.
4. 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 sitting board member for response.
5. Pursuant to RSA 673:15, whenever the Board exercises its regulatory or quasi-judicial powers, it may, at its sole discretion, compel the attendance of witnesses. All expenses incurred under this section for compelling the attendance of a witness shall be paid by the party or parties requesting that a witness be compelled to attend a meeting of the Board.
6. If there are no further questions or discussion, the public hearing on that docketed item is closed.



#### E. Site Visits.

The Board may, by majority vote, continue the hearing of an application to allow the Board, as a whole, an opportunity to make a site visit which is open to the public. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board.

#### F. Deliberations.

1. Deliberation of a case shall occur only during a public meeting.

2. During deliberation, Board members should consider how the evidence addresses the specific criteria associated with the application for relief before the Board.

3. 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 within 90 days of the receipt of the notice of appeal provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable.

4. When ready to decide on a case, the Board shall make one motion to approve or disapprove the application for relief as a whole. The Board should not make separate determinations or create multiple motions regarding individual aspects of the case or relief criteria. Findings of fact and reasons for the decision should supplement a decision.

5. 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. If the Board is unable to take action, it shall continue the matter for further consideration to a date certain within 90 days of the receipt of the notice of appeal provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable.

6. When voting, the Board shall consider approval or disapproval of the application for relief as a whole. The voting method shall not include separate tabulations for how the application for relief satisfies each individual criteria for granting relief.

7. The Board is not required to make a motion or create supplemental findings of fact/decision reasoning at the meeting during which a case has been heard. The Board may, as long as it adheres to the time limits prescribed by NH RSA's for making a decision:

- a. create a motion and/or final decision reasoning at a future meeting or
- b. assign sitting regular member(s) to create a motion and/or final decision reasoning to be considered at a future meeting.

8. In some situations, continuation of a case to a date certain as indicated in Section 6, subsection F will be the next regularly scheduled meeting date. However, the Board may be required to schedule a special meeting date with proper noticing in order to be in compliance with the NH RSA time limit requirements for continuation of a case.

9. Abstention from voting by a board member is discouraged without a sufficient cause or reason.

#### G. Decisions.

1. The Board shall begin formal consideration and shall approve or disapprove an application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. (RSA 674:33.VIII)

2. 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 and applicant inspection within the time limits as specified by RSA 676:3. If the appeal is approved or denied, the notice shall include the reasons for the approval or denial.

3. 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 or others. Reasonable conditions shall also include time limits to effectuate the subject matter of an application and 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. Rehearing Procedures.

1. Within 30 days after any order or decision of the Board, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the grounds for the rehearing. (RSA 677:2)

2. A motion for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Zoning Board of Adjustment or the Board of Appeals shall be taken unless the appellant shall have made application for rehearing as provided in RSA 677:2. (RSA 677:3.I)

3. Upon the filing of a motion for a rehearing, the Zoning Board of Adjustment or the Board of Appeals shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the Zoning Board of Adjustment or the Board of Appeals may prescribe. (RSA 677:3.II)

## **SECTION 7: BOARD COMMUNICATIONS**

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

Zoning Board of Adjustment  
Attn: Planning and Zoning Administrator  
Town of North Hampton  
237A Atlantic Avenue  
North Hampton, NH 03862

Any such communications must be received by the Planning and 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. The Planning and 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 by the Planning and Zoning Administrator. One original hard copy and fourteen (14) hard copies of any such material(s) shall be submitted and shall be distributed to each regular 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. Regular 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. Regular board members and/or alternate members shall not communicate by e-mail as to the Board’s active applications and/or decision making. All board members should direct any email communications only to the Planning and Zoning Administrator email address, not other Board member email addresses, as a means to avoid the appearance that board members are conducting a meeting in violation of NH RSA’s or holding ex parte communications.

## **SECTION 8: RECORDS**

A. Records of Board proceedings shall be maintained in accordance with State of New Hampshire RSA’s.

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 Planning and Zoning Administrator and made available for public inspection at the Town Offices in accordance with RSA 673:17.

D. A copy of final written decisions shall be made available to the applicant and be placed on file available for public inspection within time limits by statute. (RSA 676:3)

### **SECTION 9: AMENDMENTS AND WAIVERS**

A. These Rules of Procedure may only be amended or revised by an affirmative vote of three (3) regular board members, and only upon due notice to all board members

B. Any portion of these rules of procedure may be waived during consideration of specific 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 sitting board member and by majority vote, waive compliance with any provision of these rules as it applies to the specific case being considered at that time only.

### **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.

### **SECTION 11: VACANCY ADMINISTRATIVE PROCEDURE**

A. Purpose.

This policy provides guidance to both the general public and the Planning and Zoning Administrator regarding the procedures interested persons should follow for Board consideration during the selection process of qualified Town residents for the filling of alternate member and regular member vacancies. It also provides a formal written record of the appointment process for Town records. The Planning and Zoning Administrator shall be responsible for administering these policies and procedures.

B. Filling Vacancies.

1. The filling of vacancies shall be performed in accordance with the conditions set forth in RSA 673:12.

#### **RSA 673:12 Filling Vacancies in Membership**

Vacancies in the membership of a local land use board occurring other than through the expiration of a term of office shall be filled as follows:

- I. For an elected member, by appointment by the remaining board members until the next regular municipal election at which time a successor shall be elected to either fill the unexpired term or start a new term, as appropriate.
- II. For an appointed, ex-officio, or alternate member, by the original appointing or designating authority, for the unexpired term.
- III. The chairperson of the local land use board may designate an alternate member of the

board to fill the vacancy temporarily until the vacancy is filled in the manner set forth in paragraph I or II. If the vacancy is for an ex-officio member, the chairperson may only designate the person who has been appointed to serve as the alternate for the ex-officio member.

2. Although the Board is under no legal obligation to appoint alternates, if it opts to do so, appointments, if made, will be made by the sitting members of the Board at any ZBA meeting when there has been proper notice and there is a candidate for consideration. Vacancies arising due to resignations of regular board members will be filled as soon as practicable, following the notice of the vacant position(s) by the Planning and Zoning Administrator. The Planning and Zoning Administrator, at the direction of the Board, shall post notice of vacant or expiring alternate and regular board member position(s) at least twenty-one (21) days prior to the candidate evaluation date set by the Board. Notices shall be posted at the Town Offices, at the Town Clerk's Office, and on the Town Website and advertised on local community television Channel 22.

3. Any Town resident of legal age meeting the requirements of State of New Hampshire law and the ZBA Rules of Procedure may be considered for appointment or reappointment. Interested residents shall submit a letter of intent addressed to the Planning and Zoning Administrator in order to be considered for appointment. The letter of intent shall include:

- a. Identification of the position and term sought,
- b. A brief description of the applicant's qualifications and experience to fill the position, and
- c. A brief statement as to why the applicant wishes to fill the position.

#### C. Appointment Process.

1. Applicants shall submit their letters by the date indicated in the vacancy notice. The Planning and Zoning Administrator will forward a copy of the letter to each member of the Board. Any resident interested in serving on the ZBA may ask to be interviewed by the ZBA or be asked by the ZBA to interview with the Board. Interviews will be conducted at a public meeting of the Board.

2. Each letter of intent will be considered by the sitting members of the Board during the selection process. All applicants will be invited to address the Board at a public meeting during which each applicant will be provided with the opportunity to make a brief statement of interest and qualifications. All applicants will be vetted by the Board. There will be no public participation allowed during this process. The Chair shall seek separate motions for appointments for each vacancy to be filled, if any, and for the term specified. Applicant(s) receiving the majority of the votes by sitting board members will be appointed to fill the vacant position(s).

#### D. Notification.

The Planning and Zoning Administrator will notify all candidates of the decisions made by the Board.

#### E. Oath of Office.

In order to be qualified as an alternate or regular member of the Board, all appointees shall make

and subscribe the oath or declaration as prescribed by the Constitution of New Hampshire within ten (10) business days of their appointment. The Oath of Office shall be administered in accordance with RSA 42:2. The Town Clerk shall keep on file a copy of board member oaths. Seating of duly appointed members can occur as soon as the Oath of Office is taken.

**F. Resignation.**

Resignation from the Board as a regular or alternate member shall be in writing delivered to the Planning and Zoning Administrator, who upon receipt shall then provide a copy to each member of the Board and the Town Clerk.