



Milford Zoning Board of Adjustment

Rules of Procedure Amended January 21, 2016

I. Authority

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance of the Town of Milford.

II. Title and Adoption

- A. These rules may be cited as the Milford Zoning Board of Adjustment Rules of Procedure.
- B. These rules shall be adopted at a regular meeting of the Zoning Board and shall be placed on file in the Office of Community Development for public inspection.
- C. These rules shall be effective upon adoption by a majority of the Board and when they have been voted on by a majority of the Board and filed with the office of the Town Clerk.

III. Members and Alternates

- A. Members must be Milford residents and are expected to attend each meeting of the Board to exercise their duties and responsibilities in a professional and impartial manner. Any member unable to attend a meeting shall notify the Chair or the Zoning Board Administrative Assistant as soon as possible.
- B. Members shall be appointed in staggered three (3) year terms. The membership of the Board shall be appointed in such a manner so that no more than three (3) regular members shall be appointed (or re-appointed) each year.
- C. Vacancies in the membership of the Board occurring other than through the expiration of a term of office shall be filled in the manner provided by RSA 673:12.
- D. Up to five (5) alternate members shall be appointed, as provided for by the Town of Milford Board of Selectmen, and should attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities.
- E. Alternates who are not designated to replace a Board member are encouraged to participate with the Board in a limited capacity. Alternates may sit with the Board and, during a public hearing, view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters, and the public. Alternates shall not make nor second motions, nor vote on

applications before the Board. 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.

IV. Officers

- A.** A Chair shall be elected annually by a majority of the Board at a regularly scheduled meeting in the month of March, or as soon thereafter as is practical. 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.
- B.** A Vice-chair shall be elected annually by a majority vote of the Board at a regularly scheduled meeting in the month of March, or as soon thereafter as is practical. 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.
- C.** All officers shall serve for one (1) year and shall be eligible for re-election.
- D.** If the Chair and Vice-chair are both unable to serve due to absence or disqualification, the remaining Board members shall elect a Chair Pro Tem to serve until the Chair or Vice-chair can resume their duties. The Chair Pro Tem shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair and Vice-chair.
- E.** The Zoning Board Administrative Assistant for the Town of Milford, who shall not be a Board member, shall maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as the Board may direct by resolution. All official records shall be located in the Office of Community Development in the Milford Town Hall.

V. Meetings

- A.** Regular meetings shall normally be held in the Board of Selectmen's meeting room in the Milford Town Hall at 7:00 pm on the first and third Thursday of the month.
- B.** If there is no business to come before the Board on the day of a regularly scheduled meeting, the meeting shall not be held.
- C.** Other meetings, such as site walks and visits, may be held on the call of the Chair, provided public notice and notice to each Board member is given in accordance with RSA 91-A:2, II.

VI. Quorum

- A.** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of regular members. If any Board member is absent from any meeting or disqualifies himself from sitting on a particular case, the Chair shall designate one (1) 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.
- B.** At any meeting where a quorum is present, all business before the Board shall be conducted, subject to paragraph XI.A.4.
- C.** At any meeting lacking a quorum, the Chair shall:

1. Call the meeting to order;
2. Announce that the Board lacks a quorum;
3. Announce all applications before the Board are tabled until the next regularly scheduled meeting of the Board; and
4. Adjourn the meeting.

VII. Disqualification

If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the Chair or secretary 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. Either the Chair or the member disqualifying him/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself from the Board table during the public hearing and during all deliberation on the case.

VIII. Ex Parte Communications

- A. Board members shall avoid ex parte communications with the applicant, abutters, or any other Board members. In the event that ex parte contact occurs, Board members shall disclose the nature and date of the communication at the beginning of the public hearing.
- B. Board members shall not seek input or advice from any source other than consulting with the Office of Community Development, the Local Government Center, or other Town officials for clarification regarding the application outside of the public hearing process.
- C. Applicants and interested parties should direct questions regarding the process to the Zoning Administrator or designee. If an applicant or interested party contacts a Board member, the member should refer that person to the Zoning Administrator or designee, or advise the person to submit information to the Board in writing.
- D. All Board members are subject to the Town Wide Email Policy.

IX. Applications

- A. Each application for a hearing before the Board shall be made on forms provided by the Office of Community Development and shall be presented to the Zoning Administrator who shall record the date of receipt.

X. Public Notice

- A. Public notice of public hearings on each application shall be given in a paper of local circulation and shall be posted in two (2) places at the Milford Town Hall not less than five (5) days before the date fixed for the hearing.
- B. Notice shall include the name of the applicant, a description of the property including the tax map identification, the action desired by the applicant, the provision of the zoning ordinance concerned, the type of appeal being made, and the date, time, and place of the hearing.

- C. Personal notice shall be made by certified mail to the applicant and all abutters not less than ten (10) days before the date of the hearing.
- D. Notice shall also be given to the Planning Board, town clerk, and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice.
- E. The applicant shall pay for all required notice costs in advance.

XI. Correspondence Relating to a Matter Before the Board

- A. The All correspondence; letters, petitions, documents, emails, etc., relating to any matter before the Board must either be submitted to the Zoning Administrator in the Office of Community Development a minimum of 3 days prior to the scheduled meeting; or be presented in person at the scheduled meeting.
- B. Any correspondence not received as specified in Paragraph A will not be considered by the Board.

XII. Public Hearings and Meetings

- A. The conduct of public meetings shall be governed by the following rules:
 - 1. The Chair shall call the meeting to order.
 - 2. The Board shall consider any old business.
 - 3. The Board shall conduct a public hearing on each application before it as follows:
 - i) The Chair shall read the public notice into the record.
 - ii) The Chair shall have the list of abutters read into the record, noting those abutters that are present.
 - iii) The applicant will present his/her application.
 - iv) Members of the Board may ask questions at any point during testimony.
 - v) The Chair shall read, or have read, into the record any letters or emails regarding the case that the Board may have received.
 - vi) The Chair shall open the meeting to public comment. Those members of the audience who wish to speak must state their name and address.
 - vii) The Chair shall control the conduct of the hearing and may impose reasonable limitations upon the number of times and the length of time any given person may speak so long as everyone with a legitimate interest is given a reasonable opportunity to state their views and present evidence. All questions and comments must be directed to the Chair.
 - viii) After all interested parties have been given a reasonable opportunity to present their evidence, the Chair shall declare the public portion of the hearing closed. Any further public input at the current meeting or subsequent meetings will require that the public hearing be formally reopened.
 - ix) Once the public portion of the hearing is closed, the Board shall discuss and act upon the application.
 - x) The public shall not be permitted to participate in the Board's deliberations, but the Chair may direct questions to members of the public and receive answers during the Board's deliberations.

- xi) Except as provided in the Right to Know Law (RSA 91-A), the deliberations of the Board shall be held in open meeting where the public can hear.
- 4. The Board has the option to end the public meeting or hearing at 10:00 pm. If the Board has not completed hearing the case currently before it, that case shall be continued until the next regularly scheduled meeting. Any other unheard cases or business will be tabled until the next regularly scheduled meeting.
- 5. The Board shall consider any other business.
- 6. If there is a quorum of members present who were sitting at the respective meeting, the minutes of that meeting shall be submitted for approval.
- 7. Once all business before the Board has been concluded, the Chair shall adjourn the meeting.

XIII. Decision

- A. Except as otherwise provided in these Rules, the Board shall normally decide all cases on the night of the public hearing and shall approve, approve with conditions, or deny the request. Any case that is not approved or approved with conditions shall be considered denied. With agreement of the applicant, the Board may table the case before it to a later date to allow for clarification or presentation of additional evidence.
- B. Notice of the decision will be made available for public inspection within five (5) business days, as required by RSA 676:3 and will be sent to the applicant by regular mail.
- C. If the request is denied, the notice shall include the reasons therefore.
- D. The notice shall also be given to the Planning Board, Code Enforcement Officer, and other town officials as determined by the Board.
- E. Pursuant to paragraph A, any conditions to be attached to a grant shall be discussed and voted upon individually, prior to the vote for approval of the grant.

XIV. Motions for Rehearing

- A. Any Motion for Rehearing must be filed during normal business hours in the Office of Community Development within the statutory 30-day appeal period of the original decision as defined in RSA 677:2.
- B. In considering a Motion for Rehearing, the Board shall determine if the party requesting the rehearing has standing as defined in RSA 677:2.
- C. A Board meeting to consider a Motion for Rehearing shall be considered a public meeting subject to the minimum posting requirements of the Right to Know Law and no formal notice is required to the applicant, petitioner, or abutters. It shall not be considered a public hearing and no testimony shall be taken. All the Board is acting upon is the motion in front of it (what has been submitted) and shall not involve comments by the applicant, petitioner, or abutters.
- D. If possible, the same Board members from the original hearing should be present when considering the Motion for Rehearing.

- E. The Board will make every effort to ensure that a full five (5) member Board is present for the consideration of any Motion for Rehearing.

XV. Motions for Reconsideration

- A. Any member of the Board may request that the Board reconsider its decision on any case, provided it is done within the statutory 30-day appeal period of the original decision as defined in RSA 677:2.
- B. The Motion for Reconsideration shall set forth all reasons for reconsideration and include all necessary supporting evidence.
- C. The Board member filing a Motion for Reconsideration shall submit the motion to the Board's Administrative Assistant at least four (4) days prior to the meeting at which the motion shall be considered.
- D. The Zoning Board Administrative Assistant shall distribute the Motion for Reconsideration to the members of the Board.
- E. A Board meeting to consider a Motion for Reconsideration shall be considered a public meeting subject to the minimum posting requirements of the Right to Know Law and no formal notice is required to the applicant, petitioner, or abutters. It shall not be considered a public hearing and no testimony shall be taken. All the Board is acting upon is the motion in front of it (what has been submitted) and shall not involve comments by the applicant, petitioner, or abutters.
- F. If both a Motion for Reconsideration and a Motion for Rehearing are filed for the same case, the Motion for Reconsideration shall be considered first.
- G. The Board will make every effort to ensure that a full five (5) member Board is present for the consideration of any Motion for Reconsideration.

XVI. Records

- A. The records of the Board shall be kept by the Office of Community Development and made available for public inspection in accordance with RSA 673:17.
- B. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made in accordance with RSA 676:3.
- C. 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 five (5) business days of the public meeting in accordance with RSA 91-A:2-II.

XVII. Joint Meetings and Hearings

- A. RSA 676:2 provides that the Zoning Board of Adjustment may hold joint meetings or hearings with other land use boards including the Planning Board, the Heritage Commission, and the Conservation Commission. Each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

- B. Joint business meetings with any other land use board may be held at any time when called jointly by the Chair of the two (2) boards.
- C. A public hearing on any appeal to the Zoning Board of Adjustment will be held jointly with another board only under the following conditions:
 - 1. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter;
 - 2. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other board is not the Planning Board, then the Zoning Board of Adjustment Chair shall chair the joint hearing;
 - 3. 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
 - 4. The other board shall concur in these conditions.

XVIII. Amendments

These Rules of Procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two (2) consecutive meetings preceding the meeting at which the vote is to be taken.

XIX. 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 or the Board and waiver would not be contrary to the spirit and intent of the rules.

XX. Definitions

- A. For the purposes of any meeting conducted by the Zoning Board of Adjustment, the term “table” shall mean *postpone to a certain time*.
- B. The unmodified terms “member”, “Board member”, and “member of the Board” shall include both regular members and alternate members.
- C. The term “continue”, when used pursuant to Paragraph XI.A.4, shall mean that the hearing of a case shall be postponed until a certain time, whereupon the case shall resume at the point in the hearing that it was continued.
- D. The term “ex parte communication” shall mean any material oral or written communication relevant to the merits of a proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between an interested person outside the Board and a member of the Board or between members of the Board.

Rules of Procedure approved on January 21, 2016.