

DEERFIELD, NH ZONING BOARD OF ADJUSTMENT BYLAWS

P.O. Box 155
Deerfield, New Hampshire 03037

Adopted October 22, 2013

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RULES OF PROCEDURE

AUTHORITY

These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA), Chapter 676:1 and Section 704.2 C of the Zoning Ordinance of The Town of Deerfield, New Hampshire

OFFICERS AND MEMBERS

1. A Chairman shall be elected annually in the Month of April by a majority vote of the Board. Said Chairman shall preside over meetings and hearings, appoint such committees as directed by the Board, and shall affix his/her signature in the name of the board.
2. A Vice-Chairman shall be elected annually in the Month of April by a majority vote of the Board. Said Vice-Chairman shall preside in the absence of the Chairman and shall have the powers of the Chairman on matters which come before the board in the absence of the Chairman.
3. A Clerk shall be elected annually in the Month of April by a majority vote of the Board. The Clerk shall maintain a record of all meetings, transactions and decisions of the Board. He/she shall perform such other duties as the Board may direct by resolution and affix his/her signature in the name of the Board.
4. All officers shall serve one year and shall be eligible for reelection.
5. Five regular members and up to five alternates to serve whenever a regular member is unable to fulfill his/her responsibilities, shall be appointed by the Selectmen for staggered three year terms. (See **RSA 673:5** and **6** and **Section 704** of the ordinance).
6. 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. 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 in-form the public of the status of any alternate present and identify the members who shall be voting on the application.
7. Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the chairman as soon as possible. Members, including the chairman and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

ESTABLISHMENT AND DUTIES OF THE BOARD OF ADJUSTMENT

Under the local provisions of **RSA 673:1 IV**, every zoning ordinance adopted by a local legislative body shall include provisions for the establishment of a Zoning Board of Adjustment. The Town of Deerfield adopted a Zoning Ordinance in April, 1973 and in Article VII, Administration and Enforcement, in Section 704 states that "There shall be a board of adjustment....whose members and alternates shall be appointed by the Board of Selectmen."

Also under **RSA 673:1 V**, every building code adopted by a local legislative body shall include provisions for the establishment of the position of a building inspector, who shall issue building permits, and for the establishment of Building Code board of Appeals. No provision has been made to establish a separate Building Code Board of Appeals, hence the Zoning Board of Adjustment acts as the Building Code Board of Appeals. The Town of Deerfield follows the ICC building codes as adopted by the New Hampshire State Legislature.

RSA 674:33 states that the Zoning Board of Adjustment shall have the power to hear and decide appeals if it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to **RSA 674:16**. In addition to administrative decision cases, The Board has jurisdiction with regard to variances, special exceptions and equitable waiver of dimensional requirements.

RSA 674:34 states that the building Code Board of Appeals shall have the power, upon an appeal filed with it by any person aggrieved by a decision of the Building Inspector dealing with the building code, 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 do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest.

RSA 674:41 II prohibits buildings on lots without frontage on Class V or better public highways (Unless the Board of Selectmen permits building on a Class VI highway) or private streets shown on plans approved by the Planning Board.

Upon application, the Board of Adjustment may grant relief from this requirement when enforcement would entail practical difficulty or unnecessary hardship and the proposed building would not adversely affect the street system, master plan, future purchasers or the finances of the Town.

MEETINGS

1. All meetings of the Board shall be held at the George B. White Meeting Room unless the Board shall vote to meet at some different place for a particular meeting.
2. Regular meetings shall be held at 7:15 pm at the place designated in the public notice on the Fourth Tuesday of each month if required by scheduled hearings. Other meetings may be held on call of the Chairman provided that public notice, and notice to each member, is given at least 24 hours prior to the time of such meeting.
3. Quorum. A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
 - a. The chairman shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.

- b. If any regular board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the chairman 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.
4. It shall be the policy of the Board of Adjustment that all potential candidates to become members or alternates to the Board shall attend three meetings of the Board prior to a recommendation to the Board of Selectmen for appointment. At least one of the meetings should be a public hearing of a case. This policy may be waived in an emergency by the Chairman and any two members of the Board by telephonic communications with due notification to the Clerk for the record.
5. The Board has adopted "Robert's Rules of Order" but may be modified by the Chair for the conduct of its meetings. A quorum for all meetings is three members, including alternates sitting in place of members. **RSA 674:33 III** states that: "The concurring vote of three members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass." For this reason, the Board will make every effort to ensure that a full 5 member board is present for consideration of any appeal. If any regular board member is absent from any meeting or hearing, or disqualifies himself/herself from sitting on a particular case, the Chairman shall designate one of the alternate members to sit in lieu of the absent or disqualified member and such alternate shall be in all respects a full member of the Board while so sitting.
6. If any member finds it necessary to disqualify himself or herself from sitting on a particular case, as provided in **RSA 673:14**, he shall notify the Chairman as soon as possible so that an alternate may be requested to sit in his/her stead. 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.
- a. The disqualification shall be announced by the Chairman or the member disqualifying himself/herself prior to the beginning of the public hearing on that case and the disqualified member shall absent himself/herself from the Board table during the public hearing and during all deliberations on that case

7. The order of business for regular meetings shall be:
 - a. Call to order by the chairman at 7:15 p.m.
 - b. Roll call by the clerk.
 - c. minutes of the previous meeting
 - d. Reading of communications, unfinished business, and miscellaneous
 - e. Public hearing
 - f. Disposition of appeals under consideration
 - g. Adjournment

8. Public hearings shall be governed by the following rules:
 - a. The Chairman shall call the hearing in session no later than 7:30 p. m.; introduce the Board members, review the Board's hearing procedures and call for the Clerk's report on the first case.
 - b. The Clerk shall read the public notice and report on the manner in which public and personal notices were given and the response to the latter.
 - c. The board will vote whether to accept the case. There may be discussion.
 - d. The applicant shall be called to present his/her appeal and those in favor of the appeal shall be allowed to speak, abutters first.
 - e. Those in opposition shall be allowed to speak, abutters first.
 - f. The applicant and those in favor shall be allowed to speak in rebuttal.
 - g. Those in opposition shall be allowed to speak in rebuttal.
 - h. The Chairman will allow a final opportunity for each side to correct errors or omissions from the floor of testimony given in (c) through (f) in this section.
 - i. Members of the Board may ask questions at any point during the testimony.
 - j. Any member of the Board, through the Chair, may request any party in the case to reappear.
 - k. Each person who appears shall be required to state his or her name and address and indicate whether he/she is a party to the case or an agent or counsel of a party to the case.
 - l. Any party of the case who desired to ask a question of another party to the case must do so through the chair.
 - m. Any person who desires that the Board compel the attendance of a witness shall present his/her request in writing to the Chairman no later than five days prior to the public hearing. A majority vote of the Board is required to reopen the hearing for a request of new information from the public.
 - n. 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 Deerfield Zoning Ordinance and the New Hampshire Planning and Land Use Regulations.

- o. The hearing on the appeal shall be declared closed and the Board will go into deliberative session.
- p. When the Board votes to grant a relief with stipulations proposed, each one must be voted on separately.
- q. The next case will be called up following the same procedure beginning with (a) in this section until all noticed cases have been heard.

APPLICATIONS FOR APPEALS

1. Each application for an appeal shall be made on Board of Adjustment Appeals Form obtained from the Building Inspector, the Planning Board or Board of Selectmen in order that the decision being appealed may be noted on the form and that the form may be signed by the denying authority, if required.
2. The completed form with appropriate attachments, fees and mailing costs shall be presented or mailed to the Clerk of the Board. The Clerk shall record the date of receipt over his/her initials or signature in the space provided on the form and assign a case number.
3. Appeals to the board from any administrative decision or requirement taken under **RSA 676:5** shall be filed within 30 days of such decision or requirement.
4. The Board will hold a public hearing on the appeal within 30 days of receipt of notice of the appeal. The board may reject any notice of appeal which is incomplete or not properly filled out. However, if the Board accepts the case, it will table the appeal for one month to allow the applicant to correct all deficiencies.
5. The Board will approve, approve with conditions, deny the appeal, or defer its decision. **RSA 676:3** requires that notice of decision or deferral will be made available for public inspection within 72 hours. A copy of the decision will be mailed to the applicant and abutters. Copies of all decisions shall be sent to the Selectmen, Planning Board and building Inspector. It is recommended that the Board post notice of all public hearings in two public places along with the other legal notice requirements of **RSA 676:7**.

REHEARINGS

1. Application for a rehearing with regard to any matter determined in any order or decision of the Board may be made within **thirty days** after the order or decision is rendered per **RSA 677:2**.
2. Such motion for rehearing shall be filed in writing with the Clerk in the manner noted in **RSA 677:3** setting forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.
3. Upon the filing of a motion for a rehearing, the Board shall, within thirty days, either grant or deny the application or suspend the order or decision complained of pending further consideration.

PUBLIC NOTICE

1. Public notice of public hearings on each application shall be published in the **Union Leader**, the Town Offices and at least one public place not less than five (5) days prior to the date fixed for the hearing. Such notice shall include the name of the applicant, a description of the property by tax map, lot number and zone; 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.
2. Personal notice shall be sent to the applicant, owner and every abutter per **RSA 672:3** by certified mail not less than **five days** before the hearing date. Said notice shall contain the same information as the public notice. Notice shall be given also to the Selectmen, the Planning Board, The conservation commission, the Building Inspector, and other parties deemed by the Board to have a special interest in the appeal per **704.2 B** of the Town of Deerfield, New Hampshire, Zoning Ordinances, 1999.
3. The cost of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such notice costs shall constitute grounds for the Board to terminate further consideration and to deny the appeal without public hearing.

FORMS

All forms and revisions thereof shall be adopted by resolution and shall become a part of these Rules of Procedure.

RECORDS

1. The records of the Board shall be kept by the Clerk and made available on request for public inspection at the Town Offices in accord with statutory requirements.
2. A final written decision will be placed on file and available for public inspection within **72 hours** after the decision is made per **RSA 676:3**. The official decision of the Board will be placed on file with the Town Clerk. The Board's case file will also have a copy of the decisions.
3. Minutes of all meetings, including names of Board members present, persons appearing before the Board and a brief description of the subject matter presented, shall be open to public inspection within 144 hours of the public meeting as provided in **RSA 91-A:2 II**. Official minutes of meetings will be placed on file with the Town Clerk.

AMMENDMENTS

1. Rules of procedure shall be adopted or amended by a majority vote at a regular meeting of the board provided that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the city or town clerk and be available for public inspection pursuant to RSA 676:1.

WAIVERS

1. 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.

JOINT MEETINGS AND HEARINGS

Joint meetings with other boards of the town may be held as prescribed under **RSA 676:2**. The Planning Board and the Board of Adjustment adopted joint meeting procedures between the two boards that were last revised June 1, 1988 and are on file with the Town Clerk. Please see **Appendix A**.

ADOPTED BY VOTE OF THE BOARD

10/22/2013

Date Adopted

APPENDIX A

JOINT MEETING PROCEDURES

Adopted by the Planning Board
Adopted by the Board of Adjustment

May 18, 1988 Revised June 1, 1988
June 28, 1988 Revised 1997
Reaffirmed 12/2012

In accordance with the provisions of **RSA 676:2**, the Deerfield Planning Board and the Deerfield Board of Adjustment do hereby adopt the following procedures for joint meetings and hearings between the two boards.

1. The initiation of a joint meeting of the two boards will be by one of the following actions:
 - a. By written petition to each board from an applicant, when subject matter is within the responsibilities of both boards, or
 - b. By request of either Board's chair.
2. A joint meeting will be held when the following conditions are met:
 - a. Each Board has adopted these rules of procedure prior to the meeting, and
 - b. Each Board approves the joint meeting or hearing by a simple majority, and
 - c. The appropriate application to each Board has been properly filled out and all applicable fees submitted in accordance with each Board's application procedure.
3. Joint meetings will be scheduled during the regular meeting of either Board for that month, whenever possible, and at the discretion of the Board chairs. If both Board's agendas do not permit this, a separate date will be determined. The notification requirements of each board will be met.
4. The Planning Board Chair will chair the joint meeting or hearing.
5. Each Board shall be responsible for rendering a decision on the subject matter within its jurisdiction. The recommendation of the other Board may be made to the deciding Board.
6. The preparation and posting of the minutes of the meeting shall be the responsibility of the Board during whose regular meeting the joint meeting was held. If a separate meeting date is held, the Planning Board shall prepare and post the minutes.
7. Each Board shall file its decision on the subject matter of the joint meeting with the time requirements for the individual Board in accordance with State statutes.
8. These procedures may be amended, as time and experience dictates, by adoption of the amendments of both boards.
9. Any requirements of these procedures not addressed, or not met may be waived by majority vote of both boards.