

Town of Hooksett



Rules of Procedure

Zoning Board of Adjustment
35 Main St
Hooksett NH 03106

Adopted December 14th, 2021

Article I - Authority

The Zoning Board of Adjustment of Hooksett, New Hampshire (the "Board"), of Merrimack County, shall have such rights, powers and duties as are conferred or imposed upon it by the Hooksett Town Council in accordance with Chapter 676:1, New Hampshire Revised Statutes Annotated and the Zoning Ordinance of the Town of Hooksett and any amendment(s) thereto.

Article II - Membership & Officers

The membership of the Board is comprised of 5 regular members and up to 5 Alternate members all of which are appointed by the Hooksett Town Council. Each member must be a resident of the Town of Hooksett. All officers shall serve for one year and shall be eligible for re-election.

Members 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 Chairperson as soon as possible. If any Board member fails to attend one-third of the regularly scheduled meetings of the Board during a calendar year or misses four consecutive meetings of the Board, the record of attendance shall be reported by the Chairperson to the Hooksett Town Council who, upon finding of no reasonable explanation of such absences, shall declare the office vacant and the member may be removed in accordance with RSA 673:13, after public hearing, upon written findings of inefficiency, neglect of duty or malfeasance in office.

All members shall take advantage of training programs, at least annually, and if possible within 6 months of being appointed. Any costs associated with training will be covered by the Town of Hooksett.

All meeting packets will either be mailed or emailed to the Board prior to each meeting. All members will maintain decorum, be courteous to the applicant(s)/representative(s) and extend courtesy to the Chairperson and Board members.

A **Chairperson** shall be elected annually by a majority vote of the Board in the month of July. The Chairperson 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-Chairperson** shall be elected annually by a majority vote of the Board in the month of July. The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters which come before the Board during the absence of the Chairperson.

A **Clerk** shall be elected annually by a majority vote of the Board in the month of July. The Clerk 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.

Any member may resign from the Board by submitting a resignation letter addressed to the appointing authority and copied to the Chairperson. Should the office of the Chairperson or Vice-Chairperson become vacant, the Board shall elect a successor from its regular membership to serve the unexpired term of said officer.

At the beginning of the public hearing, the Chairperson shall inform the public of the members who shall be voting on each application and identify any Alternate present. Any member wishing to recuse themselves from an application must indicate same to the Chairperson at this time.

Alternates shall attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve whenever appointed by the Chairperson to fulfill the responsibilities of a regular member of the Board, including vacancies.

Article III - Role of Code Enforcement Official & Other Staff

The Code Enforcement Officer or staff shall inform the applicant as to the requirements of the Zoning Ordinance and procedures concerning appeals. The Code Enforcement Officer or staff may require additional information or exhibits as needed to illustrate the scope of the project. Any abutters to a proposed project will be verified by staff as part of the review process.

The Code Enforcement Officer or staff are authorized by the Board to refuse applications which do not meet the minimum requirements as listed in the applicable statute or on the application. Public hearings shall not be scheduled, advertised or held until such time as the application is deemed sufficient for filing by the Code Enforcement Officer or staff. Any application deemed inadequate by the Code Enforcement Official, staff or Board which requiring more detailed information may be postponed until such time as adequate documentation is received from the applicant.

The Code Enforcement Officer shall provide all information submitted with the application to the Board at least one week prior to the scheduled public hearing.

Article IV - Meetings

Regular Meetings shall be held at the Town of Hooksett Municipal Building, at 6:30 p.m. on the second Tuesday of each month.

Special Meetings shall be held at the call of the Chairperson at such time and place as designated by the Chairperson provided public notices and notice to each member is given at least 24 hours (excluding Sundays and legal holidays) prior to such meeting. A written request by 3 members to the Chairperson for a special meeting may also be made. Notice requirements shall be made in accordance with RSA 91-A.

Quorum: A quorum for all meetings of the Board shall be 3 members, including Alternates sitting in place of members. The Chairperson shall make every effort to ensure that all 5 members, and at least 1 Alternate, are present for the consideration of any appeal or

application. No member shall leave a meeting without permission if their presence is necessary to make a quorum.

If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chairperson 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.

Alternates shall be activated on a rotating basis from those present at a particular meeting. When an Alternate is needed, the Chairperson 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.

During a public hearing, and if not appointed by the Chairperson, 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 shall no longer participate 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.

If an Alternate is seated for an application on which no action is taken during that meeting, it shall be the role of the Alternate to conclude the review of the application, if continued and presented at a later date, and participate fully in the action of that application. If there are less than 5 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 5 members present that shall not solely constitute grounds for a rehearing should the application fail.

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.

Lack of Quorum: If a quorum is not present, the Chairperson may adjourn the meeting to a day and hour fixed by the Chairperson.

Disqualification: In accordance with the provision of RSA 673:14, no member of the Board shall participate in deciding, or shall sit upon the hearing, of any question which the Board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if such member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from services of juror or knowledge of the facts involved gained in the performance of the member's official duties.

Either the Chairperson or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. When uncertainty arises as

to the application of the paragraph above to a Board member in particular circumstances, the Board shall, upon the request of that member or another member of the Board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than Board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

Any member disqualified pursuant to this section shall remove him/herself from the Board table during the public hearing and during all deliberations on the matter in question. Such disqualification shall be noted in the minutes of the hearing.

To assist a member in determining whether they should 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.

Order of Business:

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

1. Call to order by the Chairperson
2. Pledge of Allegiance
3. Roll call by the clerk
4. Minutes of previous meeting
5. Unfinished business
6. Continued Public Hearings
7. New Public Hearings
8. Discussion of any potential Regional Impact
9. New Business
10. Communications and miscellaneous
11. Adjournment

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

Postponements: All applicants will be allowed one (1) postponement of the hearing on its application, and shall notify the Community Development Office in writing of its intent to postpone such hearing at least 2 days prior to the meeting at which its application is to be

considered. If the applicant requests a second postponement of the hearing, the application will be considered to have been withdrawn and the applicant must file a new application with the Board in order to receive a hearing. The provisions of this paragraph shall not apply to any postponement requested by an applicant as a result of the inability of the Board to provide the applicant with a full five-member Board for the hearing on the application.

Minutes: The recording secretary shall prepare a preliminary draft of the minutes, stamped “Draft” for presentation to the Board. Once the Board has approved the minutes or approved the minutes with changes, the recording secretary shall place a copy of the approved minutes, incorporating any changes, into a permanent file. The recording secretary shall sign his/her name on the minutes as the party drafting them and submitting them to the Board.

Criteria for Determining Regional Impact: In accordance with RSA 36:54-58 and in order to make a determination of impact on a neighboring municipality, the impact criteria for the Board to consider on every new application prior to opening a public hearing shall include, but are not limited to, the following:

- a. Residential Developments: proposals for lots or dwellings that would increase the existing housing stock of the town by more than 25% or specify the number of dwelling units within a certain timeframe.
- b. Commercial Development: proposals for new or expanded space of 50,000 square feet or greater;
- c. Industrial Development: proposals for new or expanded space of 100,000 square feet or greater;
- d. Other factors to be considered:
 - a. Proximity to other municipal boundaries;
 - b. Traffic impacts on the regional road network;
 - c. Potential effect on groundwater, surface water and wetlands that transcend municipal boundaries;
 - d. The potential to disturb or destroy a significant or important natural environment or habitat;
 - e. The necessity for shared public facilities, such as schools or solid waste disposal;
 - f. Anticipated emissions such as light, noise, smoke, odors or particulars;
 - g. The potential for accidents that would require evacuation of a large area;
 - h. The generation and/or use of any hazardous materials; and
 - i. Any other factor considered important to the Board.

Manner of Voting: The voting by the Board shall be by roll call vote, the results of which shall be recorded in the minutes.

Article V - Application, Hearings & Decisions

Applications: Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Community Development Office prior to the meeting deadline who shall record the date of receipt.

At each meeting, the Code Enforcement Officer shall present to the Board all applications received by him/her at least 7 days before the date of the meeting. Any application received after the deadline will be placed on the following month's agenda. If the applicant is not the property owner, he/she must supply a letter granting the applicant authority to act on his/her behalf.

The completed application must include all necessary documents, as required by statute or listed on the application, in support of the applicant's case. If an application has been scheduled for a hearing but has missing, incorrect, or inaccurate information, the Code Enforcement Officer shall notify the applicant immediately upon discovery and said information shall be received by the Community Development Office ten (10) days prior to the hearing. If the information is not provided, as requested, within the required timeframe, the Board, at its discretion, may continue the hearing until the following month.

Fees: A \$30.00 application fee for residential and a \$60.00 application fee for non-residential shall accompany all applications.

Forms: All forms prescribed herein, and revisions thereof shall be adopted by resolution of the Board and shall become part of these rules of procedure.

Appeals from an Administrative Decisions (RSA 676:5) shall be filed within 30 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner, as determined by the Board.

Public Notice: Public notice of public hearings on each application shall be given in the manner prescribed in RSA 676:7 and RSA 91-A.

The appellant and every abutter and holder of conservation, preservation, or agricultural preservation restrictions shall be notified of the hearing by certified mail, as defined in RSA 21:53, stating the time and place of the hearing, and such notice shall be given not less than 5 days before the date fixed for the hearing of the appeal. The Board shall hear all abutters and holders of conservation, preservation, or agricultural preservation restrictions desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate. Any party may appear in person or by the party's agent or attorney at the hearing of an appeal.

A public notice of the hearing shall be placed in a newspaper of general circulation in the area not less than 5 days before the date fixed for the hearing of the appeal. The cost of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the Board to terminate further

consideration and to deny the appeal without public hearing.

The public hearing shall be held within 45 days of the receipt of the notice of appeal. If the Board finds that it cannot conclude the public hearing within the time available, it may vote to continue the hearing to a specified time and place with no additional notice required.

“Abutter” means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. (See RSA 672:3).

4. **Public Hearing:** The presentation and all testimony given to the Board must be truthful and given in good faith.

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

- a. The Chairperson shall call the hearing in and each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case;
- b. The applicant or agent shall be called to present his appeal;
- c. Any party to the case who wants to ask a question of another party to the case must do so through the Chairperson;
- d. Any member of the Board, through the Chairperson, may request any party to the case to speak a second time;
- e. Those appearing in favor of the appeal shall be allowed to speak;
- f. Those in opposition to the appeal shall be allowed to speak;
- g. The applicant and those in favor shall be allowed to speak in rebuttal;
- h. The Board of adjustment 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;
- i. The Chairperson 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;
- j. The hearing on the appeal shall be declared closed and the next case called up; and
- k. The Chairperson has the power to limit testimony which the Board believes to be redundant, merely cumulative, is primarily a personal attack or does not address the proposal or issue(s) before the Board.

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 to the applicant by certified mail. If the appeal is denied, the notice shall include the reasons, therefore.

Voting: The Chairperson 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.

Motions for Reconsideration/Rehearing: Any motion for rehearing or reconsideration filed pursuant to RSA 677:2 shall be filed with the Community Development office within thirty (30) days from the date of the original decision. 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.

Rehearing Procedures: 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.

Article VI - Miscellaneous

Communications to the Board: All communications to the Board shall be directed and filed with the Community Development Office and shall thereafter be provided to the Board.

Site Visits: Visits to specific sites shall be announced and scheduled for a time and date set forth by the majority of the Board. Site visits are an extension of the Board meeting and are open to the public. If there is a quorum present, minutes are to be taken by staff, then approved, and recorded at the next scheduled meeting.

Records: The records of the Board shall be kept by the clerk and made available for public inspection at the Community Development Office in accordance with RSA 673:17. Final written decisions will be placed on file and 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 5 business days of the public meeting. Approved minutes must also be posted on the website in a consistent and reasonably accessible location, or a notice must be posted and maintained on the website stating where minutes may be reviewed, and copies requested. RSA 91-A:2, II.

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, the historic

district commission, the building code board of appeals, and the inspector of buildings, and that each board shall have discretion as to whether 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 chairperson of the two boards.

A public hearing on any appeal to the Board 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 chairperson shall chair the joint hearing. If the other board is not the planning board, then the Board Chairperson shall chair the joint hearing;
- 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.

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.

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 and shall be placed on file with the town clerk and be available for public inspection pursuant to RSA 676:1.