

ZONING BOARD OF ADJUSTMENT

TOWN OF EPSOM, NH

RULES OF PROCEDURE

AUTHORITY

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the zoning ordinance and the map of the town of Epsom.

OFFICERS

1. A chairman shall be elected annually by a majority vote of the board in the month of May. He shall preside over all meetings and hearings, appoint such committees as directed by the board and shall affix his signature in the name of the board.
2. A vice chairman shall be elected annually by a majority vote of the board in the month of May. The vice chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters which come before the board during the absence of chairman.
3. A clerk shall be elected annually by majority vote of the board in the month of May. 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. If the board so chooses, a secretary may be appointed to serve as the clerk and be paid at a rate as designated by the board. The secretary shall have the responsibilities of the clerk and may serve as an alternate member.
4. All officers shall serve for one year and shall be eligible for re-election.
5. Up to five alternate members shall be appointed, as provided for by the local legislative body, to serve whenever a regular member of the board is unable to fulfill his responsibilities.

6. In the event a regular member is absent for a meeting, the Chairman shall determine which alternate member stands in for the regular member. All alternates members may sit with the Board to hear and ask questions during a hearing regardless of whether or not they are standing in for a regular member.

MEETING

1. Regular meetings shall be held at Epsom Town Hall or any other public office within the town during any weekday of the month. Meetings may be held on the call of the chairman provided public notice and notice to each member is given at least 24 hours, excluding Sundays and holidays, prior to such meetings.

2. Quorum. A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.

RSA 674:33,III provides that "... the concurring vote of three members of the board shall be necessary to reverse any action of an administrative official or to decide in the favor of any appeal..." For this reason, the board will make every effort to ensure that a full five member board is present for the consideration of an appeal.

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 the place of the absent or disqualified member, and such alternate shall be in all respects a full member of the board while so sitting. Only those members or designated alternates who resided over the original case prior to the official closing of the hearing will be eligible to make the formal decision. Any re-appeal shall be made to the full Board in accordance with these rules.

3. Disqualification. If any members finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he shall notify the chairman as soon as possible so that an alternate member 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 any other 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.

The disqualification shall be announced by either the chairman or the member disqualifying himself before the beginning of the public hearing on the case. The disqualified member shall absent himself from the board table during the public hearing and the deliberation on the case.

4. Order of Business. The order of business for a regular meeting shall be as follows:

- a. Roll call by the chairman
- b. Minutes of the previous meeting

- c. Unfinished business
- d. Public hearing
- e. New business
- f. Communications and miscellaneous
- g. Adjournment

(Note: the board can elect to hold the hearings immediately after the roll call in order to accommodate the public if they so elect.)

APPLICATION/DECISION

1. APPLICATIONS.

a. Each application for a hearing before the board shall be made on the forms provided by the board and shall be presented to the board's chairman who shall review the application for completeness prior to acceptance and record the date of acceptance on the top of the application with signature and/or initials.

Appeals from an administrative decision taken under RSA 676:5 shall be filed by application to the board within thirty (30) days from the decision of the administrative officer or as determined by the majority of the Board.

If an administrative appeal applicant is given incorrect or insufficient process information from a Board member or ZCO which negatively impacts their case, as determined by the Board, the Board can vote to reimburse the applicant's filing fees.

At each meeting, the clerk/secretary shall present to the board all applications received by him since the prior meeting.

b. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure .

2. PUBLIC NOTICE

a. Public notice of public hearings on each application shall be made in a local newspaper of general distribution within the town of Epsom at least five (5) days before the date fixed for the hearing. Public notice shall also be posted within two (2) public locations in the town of Epsom, generally at the U.S. Post Office and at the Epsom Town Office, at least five (5) days prior to the fixed hearing date. Notice shall include the name of the applicant; description of the property, including the tax map identification; action desired by the applicant; provisions of the zoning ordinance concerned; the type of appeal being made; and the date, time, and place of the hearing.

b. Personal notice shall be made by certified mail (return receipt) to the applicant and all abutters not less than five (5) days before the date of the hearing. Notices shall also be given to the planning board, the town clerk, the zoning

compliance officer and other parties deemed by the board to have a special interest. Said notices shall contain the same information as the public notice and shall be made on forms provided for this purpose.

c. The public hearing shall be held within thirty (30) days of the receipt of the notice of appeal.

d. Cost of all required notices must be paid for in advance by the applicant. Cost shall include all other customary expenses incurred by the board to include, but not be limited to, postal fees and secretarial costs. Failure to pay such costs shall constitute valid grounds for the board to terminate further consideration and to deny the appeal without a public hearing.

3. PUBLIC HEARING

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

a. The chairman shall call the hearing in session and ask for the clerk's report on the first case.

b. The clerk shall read the application and the report on how the public notice and personal notice were given.

c. The board of adjustment will hear any verbal evidence and receive any written documentation which pertains directly to the case through the following manner;

i. The applicant shall be called to present his appeal

ii. Those appearing in favor of the appeal shall be allowed to speak..

iii. Those in opposition to the appeal shall be allowed to speak

iv. The applicant and, those in favor shall be allowed to speak in rebuttal

v. Those in opposition to the appeal shall be allowed to speak in rebuttal.

vi. All who provide verbal testimony shall be sworn in by the Chairman as follows:

- Chair – “Do swear to tell the truth, the whole truth and nothing but the truth so help you God?”
- Public – I Do (Or similar – e.g. “Yes”)
- Chair – Proceed.

d. Members of the board may ask questions at any point during testimony.

e. Each person, who testifies before the board, shall be required to state their name and address, and indicate whether they are a party to the case or an agent or counsel of the party to the case. Should the applicant not be present and be represented by an agent or counsel, the board shall be furnished a letter stating who

shall represent the applicant during the hearing.

f. Any member of the board, through the chairman, may request any party to the case to speak a second time.

g. Any party to the case who wants to ask a question of another party to the case must do so through the chairman.

h. The chairman shall present a summary of the facts as presented by the application. Opportunity will be given for corrections from the applicant.

1. Any person who wants the board to compel the attendance of a Witness shall present his request in writing to the chairman not less than three (3) days prior to the public hearing.

m. The hearing on the appeal shall be declared closed and the next case called up.

4. DECISION

All decisions are made based on a minimum of 3 Board members acting on the decision. For example, if 3 members are in the affirmative, the case is approved. If 3 members are in the negative, or if the case cannot attain 3 votes in the affirmative, the case is denied.

If the decision being made is a special exception or variance, all Board members shall complete the associated checklist prior to reaching a decision on the case. If all questions on the checklist are answered in the affirmative by a Board member, that Board member should endeavor to vote in for the decision when it is motioned.

Decision on the case may be made prior to the next case being called up should the board agree. However, the board shall decide all cases within thirty (30) days of the public hearing. The board will approve, approve with conditions, deny the appeal, or defer its decision. Notice of the decision will be made available for public inspection within 5 business days (formerly 72 hours), as required by RSA 676:3, by recording a copy of the same at the Epsom Town office and may be mailed to all persons notified of the public hearing. If the appeal is denied (or deferred has been DELETED here), the notice shall include the reasons therefore. Any person affected by the decision has the right to appeal this decision in accordance with RSA 677:2. The motion for rehearing shall be in writing and must set forth the grounds for the basis of a rehearing. It shall be received by the Board within a thirty (30) (formerly 20) day time period beginning the next working day after the decision has been recorded. The board's working day is defined as any day of the week excluding Saturdays, Sundays, and holidays in which the Town Office is closed.

The board shall act on the motion for a rehearing in accordance with RSA 677:3.

5. RECORDS

The records of the board shall be kept by the clerk and made available for public inspection at the Epsom Town Office during normal working hours and in accordance with

statutory requirements.

1. Final written decisions will be placed on file within 5 days (formerly 72 hours) after the decision is made in accordance with RSA 676:3.

2. Minutes of all meetings, including names of the board members, persons appearing before the board, and a brief description of the subject matter, shall be open to public inspection within 144 hours of the public meeting in accordance with RSA 91-A:2 II.

JOINT MEETINGS AND HEARINGS

1. RSA 676:2 provides that the board of adjustment may hold joint meetings or hearing with other "land use boards", such as the planning board. Each board shall have its own discretion as to whether or not to hold a joint meeting with any other land use board.

2. Joint business meetings with any other land use board may be held at any time when called jointly by the chairman of the two boards.

3. A joint public hearing on any appeal to the board of adjustment will be held, jointly **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 chairman shall chair the joint meeting. If the other board is not the , planning board, then the board of adjustment chairman shall chair the joint meeting; and,

c. The provisions covering the conduct of the public hearings, set forth in these roles, 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.

AMENDMENTS

These rules of procedure may be amended by majority vote of the members of the board provided that such amendment is read at two successive meetings immediately preceding the meeting in which the vote shall be taken.