

# Town of Dublin



## Zoning Board of Adjustment

PO Box 277

Dublin, NH 03444

## RULES OF PROCEDURE

**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 Dublin, N.H.

**APPEALS**-any and all appeals heard by the Board of Adjustment shall have the appeal presented to the Board by either the lawful owner of the property seeking relief or his/her representative designated in writing to the Board as having authorization to speak on the owner's behalf in cases where the owner is absent from the appeal hearing.

Such written authorization shall contain a valid owner's signature, reference the specific use to which the authorization to represent the owner is being granted, and dated on or before the hearing date. It is not required that the owner's signature be notarized. In cases where the property owner is incapacitated, a valid Power of Attorney may be presented to the Board at the time of application which will allow the POA designee to present the appeal on the owner's behalf.

In such instances where the property owner is not present but represented by an Attorney, the aforementioned authorization is nonetheless required.

Any Authorization Letter intended to substitute a designated representative in place of the property's lawful owner shall be presented to the Board of Adjustment Chairman and/or Board Secretary prior to acceptance of the application for a hearing.

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(Revised September 21, 2022, Adopted March 23, 2023)

### **OFFICERS**

A chairman shall be elected annually by a majority vote of the Board at the April meeting. The chairman 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-chairman shall be elected annually by a majority vote of the Board at the April meeting. 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 the chairman.

A paid secretary shall be appointed by a majority vote of the Board and shall serve in this capacity until she/he resigns or is removed by a majority vote of the Board for performance or for other reasons. The secretary will normally be paid at the same hourly rate as the Planning Board secretary. The secretary 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 officers shall serve for one year and shall be eligible for re-election.

### **MEMBERS AND ALTERNATES**

Five regular and up to five alternate members shall be appointed by the 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.

Members shall 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.

Member and alternate terms shall be three years.

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Repetitive or chronic unexcused absences from scheduled Board meetings may lead to a recommendation by the chairman to have that member's appointment withdrawn.

### **MEETINGS**

1. Unless there is no business to consider, regular meetings shall be held at the Dublin Town Hall, at 7:00 pm on the fourth Thursday of each month unless there is no business to be considered. Other meetings may be held on the call of the chairman provided public notice and notice to each member is given in accordance with RSA 91-A: 2, II. Public hearings shall be held within thirty days of the receipt of the notice of appeal.

At the discretion of the chairman, a site visit may be scheduled within one week prior to the public hearing to familiarize board members with the actual setting related to the appeal. The noticing requirements for public hearings and site visits are covered under paragraph 2 (Public Hearing) in the Application/Decision section of this document. The applicant or his representative shall be present during the site visit to respond to any questions raised at the site.

2. A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members. The Board will make every effort to ensure that a full five-member board is present for the consideration of any 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 place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.

In the event a full 5 member Board is not available to hear an appeal, the applicant shall be advised that 3 favorable votes are required on an appeal so that the applicant has the opportunity to make a choice of proceeding with the hearing or continuing it to the next scheduled meeting date when a full board is available to hear the case.

3. Disqualification: If any member finds it necessary to disqualify himself 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 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, the applicant or the public that the member recuse themselves. Any such request shall be made before the public hearing gets underway.

Either the chairman or the member disqualifying himself 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.

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### **Order of Business:**

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

- Call to order by the chairman
- Roll call by the secretary
- Minutes of previous meeting
- Unfinished business
- Public hearing
- New business
- Communications and miscellaneous
- Other business
- Adjournment

This is the usual order of business but, the Board may wish to alter the order of business immediately after the roll call to accommodate the public or for other reasons.

### **APPLICATION/DECISION**

#### **1. Applications.**

- a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the secretary of the Board of Adjustment who shall record the date of receipt over his/her signature.

Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.

At each meeting, the secretary shall present to the Board all applications received by him/her at least seven (7) days before the date of the 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 and site visits (if applicable) on each application shall be given in the Monadnock Ledger-Transcript and shall be posted at the Dublin Town Hall and on the Town Website and at the General Store and Post Office not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include 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 to the applicant, all abutters and other parties deemed by the board to have a special interest not less than five (5) days before the date of the hearing. In addition, the notice shall be posted on the Town website. Said notice shall contain the same information as the public notice.
- c. The applicant shall pay for all required notices in advance.

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### **3. Public Hearing**

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

#### a. General Requirements

- 1.) Board members may ask questions at any point during testimony.
- 2.) 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.
- 3.) Any member of the Board through the chairman may request any party to the case to speak a second time.
- 4.) Any party to the case who wants to ask a question of another party to the case may do so through the chairman.
- 5.) Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chairman not later than three days prior to the hearing.
- 6.) 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 zoning ordinance and state zoning law"

#### b. Hearing Format

- 1.) The chairman shall call the hearing into session, introduce the Board members and request the secretary to report on the first case.
- 2.) The secretary shall read the application and public notice and report on how the public notice and personal notices to the applicant, abutters and other interested parties were given.
- 3.) The applicant shall be called to present his appeal.
- 4.) Those appearing in favor of the appeal shall be allowed to speak.
- 5.) Those in opposition shall be allowed to speak.
- 6.) Those appearing on the appeal shall be allowed to speak. Speaking on the appeal means asking questions which are relevant and intended to clarify the appeal rather than speaking in favor of or in opposition to the appeal.
- 7.) The applicant and those in favor of the appeal shall be allowed to speak in rebuttal.
- 8.) Those in opposition to the appeal shall be allowed to speak in rebuttal.

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9.) The chairman shall present a summary setting forth the facts of the case and the claims made by each side. Opportunity shall be given for correction from the floor.

10.) The hearing on the appeal shall be declared closed and the next case called up, if applicable.

### **4. Decisions:**

The Board shall decide all cases within thirty (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. The notice shall also be given to the board of selectmen, planning board, conservation commission, code enforcement officer, health officer, and other town officials as determined by the board.

**5.** 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 as per 74 Cox Street LLC v. City of Nashua, September 21, 2007.

### **RECORDS**

1. The records of the Board shall be kept by the secretary and made available for public inspection at the Dublin Town Hall in accordance with RSA 673:17.
2. Final written decisions will be placed on file and available for public inspection within 144 hours (or 5 business days, whichever is less) after the decision is made. RSA 676:3.
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 144 hours (or 5 business days, whichever is less) of the public meeting. RSA 91-A: 2 II.

### **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 successive meetings immediately preceding the meeting at which the vote is to be taken.

### **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 waiver would not be contrary to the spirit and intent of the rules.

### **JOINT MEETINGS AND HEARINGS**

1. RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other "land use boards" including the planning board and

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the code enforcement officer, and that each board shall have 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 public hearing on any appeal to the board of adjustment 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 chairman shall chair the joint hearing. If the other board is not the planning board, then the Board of Adjustment chairman shall chair the joint hearing; and
  - 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.

### **HIRING OF EXPERTS**

The Board of Adjustment is authorized to select and retain outside technical, investigative or legal assistance when the Board deems such assistance to be necessary to properly evaluate any application. Pursuant to RSA 673:16, the Board is further authorized to impose reasonable fees and costs upon the applicant for the expense of such consultant, investigative or legal services.

Amended March 23, 2023