TOWN OF PETERBOROUGH
ZONING BOARD OF ADJUSTMENT

RULES OF PROCEDURE

A. AUTHORITY

These rules of procedure for the Town of Peterborough Zoning Board of Adjustment are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the zoning ordinance of Peterborough, New Hampshire.

B. OFFICERS

1. A Chair shall be elected annually by a majority vote of the Board in the month of June. 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.

2. A Vice-Chair shall be elected annually by a majority vote of the Board in the month of June. 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.

3. All Officers shall serve for a one-year term and be eligible for re-election.

C. MEMBERS AND ALTERNATES

1. Five regular members shall be elected, as provided for by Town Meeting. Members must reside in Peterborough 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 Chair as soon as possible. Members shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

2. Up to five alternate members may be appointed by the Board. Alternate members 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.

3. The term of regular and alternate members shall be three years. The initial terms of members first elected or appointed shall be staggered so that no more than two elections or appointments occur annually.

4. Vacancies in the Board shall be filled by the remaining Board members until the next regular election at which time a successor shall be elected to either fill the unexpired term or start a new term, as appropriate.

5. Those interested in becoming an alternate should complete a Volunteer Application from the Town Hall and return to the Office of Community Development. Time permitting, the application will be reviewed and voted on by the Zoning Board at the next monthly meeting.

D. MEETINGS

1. Regulatory meetings shall be held at the Select Board's Meeting Room, Peterborough Town House, 1 Grove Street, Peterborough, New Hampshire, at 7:00 p.m. on the first Monday of each month unless otherwise duly noticed. Other meetings may be held on call of the Board, subject to proper notification. In the event regular scheduled meetings fall on a major religious holiday the Board may reschedule.

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

3. RSA 674:33,III provides that "*The concurring vote of 3 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 five-member Board is present for the consideration of any appeal.

4. In the event there are not enough full and alternate members to make a full five member Board, the applicant will be given the option of continuing the hearing, however such continuation shall not exceed the lesser of 2 proposed meeting dates or 60 days, at which time a quorum of members will decide the case. If the Board cannot pass a motion either to approve or deny by a majority vote, then the Board shall continue the matter until a fifth member can be present. The chair will notify this fifth member of the continuation and direct him or her to familiarize themselves with the record.

5. If any regular Board Member is absent from any meeting or hearing, or disqualifies himself/herself from sitting in a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member before moving into deliberative session for a particular case. This designated alternate shall be in all respects a full member of the Board while so sitting. In order to give all alternates an opportunity to participate as full members, the Chair will make every effort to select alternates on a rotating basis.

6. Disqualification.

   a. If any member finds it necessary to disqualify himself/herself from sitting in a particular case as provided in RSA 673:14, he/she shall notify the Chair as soon as possible so that an alternate may be requested to sit in his/her 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. If there is a majority vote by the Board to step down that member shall disqualify him/herself from acting on that case.

   b. The disqualification shall be announced by either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case. The disqualified member shall absent himself/herself from the Board table during the public hearing and during all deliberation on the case. Disqualification may be advisable under the following two circumstances:

      (1) Conflicts of Interest: The potential for a conflict of interest occurs when a member has a direct personal or pecuniary interest in the outcome of a case that differs from the interest of other citizens.

      (2) *Ex Parte* Contacts: Board members should <u>never</u> discuss a pending application outside of the Board meeting/hearing. And after a case is decided, there should be no discussion until after the appeals period has passed. If someone gives a Board member information relative to an application, that member is obliged to reveal that information to the entire Board.

7. Right-to-Know. All public proceedings shall be open to the public, and any person shall be permitted to use recording devices.

a. **Policy on Audio Recording of Meetings**. In accordance with RSA 91-A:2 any person is permitted to use recording devices at meetings of the ZBA, including but not limited to tape recorders, cameras, and videotape equipment. Should the ZBA record its meetings, the following guidelines shall be followed:

(1) The recorder will be set up in full view of all attendees. The Chair will announce at the beginning of the meeting that it will be recorded and ask all members of the public to clearly identify themselves prior to making any statements.

(2) The recorder will be used only for public hearings and deliberations.

(3) The recorder will be kept at the Office of Community Development. Copies of the recording may be requested by any person at a charge of $10 per copy. Following a request, staff has up to five business days to provide the copy.

(4) In the review of minutes by the Board, if there is a discrepancy or difference of opinion about a substantive matter in the draft written minutes, the Board will use the recording for clarification.

(5) The purpose of the recording is to assist the minute-taker in preparing accurate minutes. Minutes are not the transcriptions of the recording.

(6) The recording of any meeting will be preserved at least through the 30-day appeal period and until the minutes of that meeting are approved by the Board, after which the recording will be deleted.

8. Order of Business. The order of business for regular meetings shall be as follows:

a. Call to order by the Chair
b. Introduction of Board
c. Review Public Hearing Rules of Procedure
d. Public hearing
e. Unfinished Business
f. New business
g. Communications and miscellaneous
h. Other business
i. Approval of Minutes
j. Adjournment

E. APPLICATION PROCESS

1. **Applications.**

a. Each application for a hearing before the Board shall be made on forms available at the Office of Community Development.

b. All applications shall be filed with the Office at least 20 days prior to the scheduled monthly meeting. All applications must contain enough information and detail to enable the code enforcement officer and the Board to understand the proposal and make an informed judgment about it. If the applicant intends to present supporting documentation, this documentation should be submitted to the Office at the same time as the application is filed. In the case of an application for relief from a dimensional requirement, a plot plan must be submitted, clearly illustrating the existing dimensions and the requested relief.

c. Appeals from administrative decisions taken under RSA 676:5 shall be filed within 30 calendar days of the decision being appealed.

2. **Public Notice.**

   a. Notice of public hearings on each application shall be given in the newspaper of record, Thursday's edition, and shall be posted at the Peterborough Town House and Peterborough Town Library not less than 10 days before the date fixed for the hearing. Every effort will also be made to post the notice on the Town's website. 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 and all abutters not less than 10 days before the date of the hearing. Said notice shall contain the same information as the public notice. Costs of all required notices must be paid for, in advance, by the applicant.

   c. Other meetings held by the Board require 24 hours notification, excluding Sundays and legal holidays, posted in two places in Town (the Town House and the Library).

3. **Public Hearing.** The conduct of public hearings shall be governed by the following rules:

   a. The Chair shall call the hearing in session, introduce Board, explain the rules of conduct and read the public notice of the hearing.

   b. The applicant shall be called to present his/her application.

   c. Members of the Board may ask questions at any point during testimony.

   d. Each person who appears shall be required to state his/her name and address and indicate whether he/she is a party to the case such as an agent or counsel, abutter or concerned citizen

   e. Any Member of the Board, through the Chair, may request any party to the case to speak a second time.

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

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

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

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

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

   k. Those wishing to make a general comment will be given the opportunity to speak.

   l. Any person who wants the Board to compel the attendance of a witness shall present his/her request in writing to the Chair not later than three days prior to the public hearing.

   m. 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.

   n. After all testimony has been heard and the Board's questions have all been satisfactorily answered, the hearing shall be declared closed. If the case is not deliberated at that time, the Board will decide, and announce a time, date and place when it will be deliberated. If a date certain is not set, the deliberative session will be duly noticed.

o. Before closing for deliberation, the Chairperson will read the following at the beginning of each deliberative session:

> ***"The Board at this time is entering into a deliberative session. The Board will not entertain or take any additional information from the applicant, his representatives or the public during this session. The Board reserves the right to request additional information at its discretion."***

p. Once the Board closes the public hearing and begins deliberations, any inactivated alternates must step away from the Board and sit with the public while the Board deliberates.

4. **Decisions.** The Board shall decide all cases within 30 days. The Board will approve, approve with conditions, deny the appeal, or defer its decision. Notice of the decision or deferral will be made available for public inspection within 5 business days, as required by RSA 676:3 and will be sent to the applicant. If the appeal is denied or deferred, the notice shall include the reasons therefore.

F. REHEARINGS AND APPEALS

1. The Select Board, any party to a ZBA decision, or any person directly affected by a ZBA decision may apply for a rehearing. Requests for rehearings shall be filed within 30 calendar days of the date of the decision. The ZBA must decide to grant or deny the rehearing within 30 days of receiving the request.

2. If the Board reverses its decision at a rehearing, a new aggrieved party may result, and that party has 30 days to request a rehearing on that decision.

3. The Board is not required to grant a request to rehear. Aside from the submission of new evidence that was not available for the first hearing, the process is designed to afford the Board an opportunity to correct any mistakes in procedure it might have made in the first hearing before any appeals are filed with the courts. When a rehearing is held, the same Board members from the original hearing should be present, if possible.

4. Any decision or order of the Board made either at a hearing, a rehearing, including a decision to not rehear can be appealed to the Superior Court within 30 days of the date of the decision.

5. An appeal to Superior Court does not prevent the applicant from utilizing the ZBA approval, unless the aggrieved party obtains a restraining order from the court.

G. RECORDS

1. The records of the Board shall be kept and made available for public inspection at the Office of Community Development in the Town House in accordance with RSA 673:17.

2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made in accordance with 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 5 business days of the public meeting in accordance with RSA 91-A:2 II.

H. 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" 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 chairs 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 applications 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 Chair shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chair 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.

I. SITE VISITS

1. A Site Visit is a visit with the Board, together with the applicant or the applicant's agent, to a location, which is the subject of an application before the Board.

2. When the Board schedules a Site Visit for the Board membership, it shall be posted as a meeting of the Board in accordance with RSA 91-A, and minutes must be taken.

3. By signing the application form, the applicant agrees to allow the Board or its designee on the subject property. If such a request is not granted, the application may be denied by majority vote of the Board without further hearings.

4. In the event that any members of the public are present at the Site Visit, public input, comments and questions may not be taken if, in the opinion of the Chair, hearing will be difficult by anyone in attendance.

J. ADOPTION/AMENDMENTS

These Rules of Procedure may be amended after public hearing by a majority vote of the Board.

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James Stewart, Chair Date

Adopted July 7, 2003
Amended October 4, 2004
Amended May 4, 2006
Amended February 4, 2008
Amended March 3, 2008
Amended September 5, 2012
Amended May 6, 2013
Amended April 6, 2015