

**RULES OF PROCEDURE
TOWN OF NEW LONDON
Zoning Board of Adjustment**

Section 1.01 Authority

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

Section 1.02 Officers

- (a) A ~~chairman~~chair shall be elected annually by a majority vote of the board when a newly appointed board is convened.
- (b) A vice-~~chairman~~chair shall be elected annually by a majority vote of the board when a newly appointed board is convened
- (c) All officers serve for one year and shall be eligible for re-election.

Section 1.03 Meetings

- (a) ~~At the discretion of the chair, a~~An organizational meeting shall be held in March at the New London town offices. Other meetings may be held on call of the ~~chairman~~chair provided public notice and notice to each member is given at least 24 hours prior to such meetings, excluding Sundays and legal holidays
- (b) For the purposes of these rules, a quorum of the board required to transact business shall consist of at least three members, at least two of whom shall not be alternates. In the event a quorum consists of three members as defined above, a unanimous vote is required.

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- (c) No member of a zoning board of adjustment 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 that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.¹
- (d) When uncertainty arises as to the application of (c) above to a board member in particular circumstances, the board shall seek the advice of Town Counsel and then, 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 676:1.²
- (e) Recusal. If any member finds it necessary to disqualify themselves from sitting in a particular case, as provided in RSA 673:14,- they shall notify the chairman as soon as possible so that an alternate may be requested to sit in their place. If a member is disqualified or unable to act in any particular case pending before the board, the chairperson shall designate an alternate to act in the member's place, as provided in RSA 673:11.³
- (f) The recusal shall be announced by either the chairman or the disqualifying member before the beginning of the public hearing on the case. The disqualified member shall absent from the board table during the public hearing and during all deliberation on the case.
- (g) Order of Business. The order of business for regular meetings shall be as follows:
- (1) The chairman shall call the meeting to order;
 - (2) The chairman shall conduct a roll call of board members present;
 - (3) The chairman shall call for approval of the minutes of the previous meeting;
 - (4) Public hearing in accordance with the procedures at Section 1.06 below
 - (5) Minutes of previous meeting
 - (6) Any Other Business
 - (7) Adjournment

¹ RSA 673:14, I.

² RSA 673:14, II. (2009)

³ RSA 673:14, III. (2009)

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Section 1.04 Application/Decision

(a) Filing the Application.

- (1) Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the Land Use and Assessing Coordinator of the board of adjustment who shall record the date of receipt over their signature.
 - (2) Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision being appealed.
 - (3) All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.
 - (4) A completed application shall consist of the following materials:
 - (a) Application;
 - (b) Owners Deed, with certification that there have been no actions affecting the title from the recording date of the deed to the date of application;
 - (c) If another appears on behalf of the owner, written evidence establishing the agency relationship shall be included in the application;
 - (d) Scale drawings showing boundaries, property lines and existing monuments at the discretion of the Board, Tax Maps may be deemed insufficient where the subject of the application concerns waterfront property.;
 - (e) Any legal memoranda or legal briefs prepared by counsel for the applicant for consideration by the Board must be received by the Board at least ten (10) days prior to the scheduled hearing date. The Board reserves the right on all matters to take them under advisement and issue a written decision within thirty (30) days.
- (b) The Land Use and Assessing Coordinator shall insure the application materials are complete before notice and hearing.
- (c) The burden for complete application and costs therefore shall rest with the Applicant.

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Section 1.05 Public Notice.

- (a) The appellant and every abutter and holder of conservation, preservation, or agricultural preservation restrictions shall be notified of the hearing by certified mail 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.⁴

- (b) 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.⁵
 - (1) The public hearing shall be held within 30 days of the receipt of the notice of appeal.
 - (2) Any party may appear in person or by the party's agent or attorney at the hearing of an appeal.
 - (3) 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.

- (c) For the purposes of these rules, communication with the board shall be through written correspondence delivered in-hand to the Town Offices, delivered via first class mail to the Town Offices, or delivered via other commercial courier services⁶ to the Town Offices or facsimile transmission of written communication transmitted to the Town fax. For the purposes of computing due dates, the communications referred to above must be received before the close of business on the day of delivery.

EMAIL?

Section 1.06 Public Hearing.

- (a) The ~~chairman~~chair shall call the hearing in session and report on the first case.
- (b) The ~~chairman~~chair shall read the application and report on how public notice and personal notice were given.
- (c) The ~~chairman~~chair shall yield the floor to the Applicant for presentation of the case.
- (d) Members of the board may ask questions at any point during testimony.

⁴ RSA 676:7, I. (a) (current through 2009 Legislative Session)

⁵ RSA 676:7, I. (b)

⁶ Federal Express, United Parcel Service, DHL Worldwide or comparable carriers

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- (e) The ~~chairman~~chair shall request all those present at the hearing to identify themselves for the record.
- (f) Equal opportunity to speak shall be given to those supporting and opposing the application at the discretion of the ~~chairman~~chair
- (g) Any person who wants the board to compel the attendance of a witness shall present his request in writing to ~~chairman~~chair not later than 3 days prior to the public hearing.
- (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 town zoning ordinance and state zoning law.
- (i) Following the receipt of all testimony, the ~~chairman~~chair shall call the board to deliberate.
- (j) During the deliberations, the Board shall make a determination, and report on the record, whether the decision on the application would have any regional impact. If the opinion of the board is that there is regional impact, it shall notify the regional planning commission within 5 business days of the decision.⁷
- (k) At the conclusion of deliberations, the ~~chairman~~chair shall call for a vote.

⁷ RSA 676:3, 677:4, 677:15 Ch. 266, Laws of 2009, SB 189; RSA 36:57, II, 677:2 Ch. 49, Laws of 2009 HB 210.

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Section 1.07 Decisions.

- (a) The board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.⁸
- (b) Whenever the board votes to approve or disapprove an application or deny a motion for rehearing, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons therefor and all conditions of approval, shall be placed on file in the board's office and shall be made available for public inspection within 5 business days of such vote. Boards in towns that do not have an office of the board that has regular business hours shall file copies of their decisions with the town clerk.⁹
- (c) Whenever a plat is recorded to memorialize an approval issued by the board, the final written decision, including all conditions of approval, shall be recorded with or on the plat.¹⁰
- (d) If the board determines that further information is required to render a decision it may continue the matter without a finding, and reschedule a further hearing;
- (e) In order for the continued matter to be heard at the continuance hearing, all the board members or alternates who were present at the initial hearing (or hearings) must be present at the continuance hearing.

Section 1.08 Records.

- (a) The records of the board shall be kept by the Land Use and Assessing Coordinator and made available for public inspection at New London Town Offices in accordance with statutory requirement.
- (b) Minutes of all such meetings, including names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting,¹¹

Section 1.09 Amendments.

⁸ RSA 676:3, I.

⁹ RSA 676:3, II.

¹⁰ RSA 676:3, III.

¹¹ RSA 91-A:2, II.

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These rules of procedure may be amended by a majority vote of the members of the board provided that such amendment is read at one meeting immediately preceding the meeting at which the vote is to be taken.

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Section 1.10 Joint Meetings and Hearings*

- (a) An applicant seeking a local permit may petition 2 or more land use boards to hold a joint meeting or hearing when the subject matter of the requested permit is within the responsibilities of those land use boards. Each board shall adopt rules of procedure relative to joint meetings and hearings, and each board shall have the authority on its own initiative to request a joint meeting. Each land use board shall have the discretion as to whether or not to hold a joint meeting with any other land use board. The planning board chair shall chair joint meetings unless the planning board is not involved with the subject matter of the requested permit. In that situation, the appropriate agencies which are involved shall determine which board shall be in charge.¹²
- (b) Procedures for joint meetings or hearings relating to testimony, notice of hearings, and filing of decisions shall be consistent with the procedures established by this chapter for individual boards.¹³
- (c) Every local land use board shall be responsible for rendering a decision on the subject matter which is within its jurisdiction.¹⁴

Section 1.11 Appeal From Board's Decision

- (a) Any person aggrieved by any order or decision of the zoning board of adjustment or any decision of the local legislative body may apply, by petition, to the superior court within 30 days after the date upon which the board voted to deny the motion for rehearing;
- (b) If the petitioner shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to Section 1.07(b) above, the petitioner shall have the right to amend the petition within 30 days after the date on which the written decision was actually filed.
- (c) The petition shall set forth that such decision or order is illegal or unreasonable, in whole or in part, and shall specify the grounds upon which the decision or order is claimed to be illegal or unreasonable.
- (d) For purposes of this section, "person aggrieved" includes any party entitled to request a rehearing under RSA 677:2.
- (e) RSA 677:2 Motion for Rehearing of Board Adjustment, Board of Appeals, and Local Legislative Body.

¹² RSA 676:2, I.

¹³ RSA 676:2, II.

¹⁴ RSA 676:2, III.

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- (f) Within 30 days after any order or decision of the board of adjustment, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefore; and the board of adjustment may grant such rehearing if in its opinion good reason therefore is stated in said motion.
- (g) RSA 677:3 Rehearing by Board of Adjustment, Board of Appeals, or Local Legislative Body.
- (h) A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.
- (i) Upon the filing of a motion for a rehearing, the board of adjustment shall within 10 days either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the board of adjustment may prescribe.

Date: April 26, 2010

ADOPTED: New London Board of Adjustment

/s/ William Green
Douglas W. Lyon
Laurie DiClerico
W. Michael Todd

Received and recorded April 26, 2010, Volume XIII, Pages 73 through 78.

/s/ Linda M. Hardy
Town Clerk