APPENDIX A:
SUGGESTED RULES OF PROCEDURE FOR LOCAL BOARDS OF ADJUSTMENT

Board of Adjustment, City/Town of _____

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 map of the city/town of _____.

Officers

1. **A chairperson** shall be elected annually by a majority vote of the board in the month of _____. 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.

2. **A vice-chairperson** shall be elected annually by a majority vote of the board in the month of _____. 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.

3. **A clerk** shall be elected annually by a majority vote of the board in the month of _____. 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.

4. All officers shall serve for one year and shall be eligible for re-election.

Members and Alternates

1. Up to **five alternate members** shall be appointed, as provided for by the local legislative body, 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.

2. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy, may participate with the board in a limited capacity. During a public hearing, 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 remove themselves from the table and 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. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

3. Members must 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 chairperson as soon as possible. Members, including the chairperson and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

Meetings

1. **Regular meetings** shall be held at (place), at (time) on the (day) of each month. Other meetings may be held on the call of the chairperson provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.

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

   a. The chairperson shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.

   b. 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.

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

   d. If there are less than five 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 five members present, that shall not solely constitute grounds for a rehearing should the application fail.

   e. 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.

3. **Disqualification:** If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he shall notify the chairperson 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 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.

   Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should step down (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.

Either the chairperson or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall exit the meeting room during the public hearing and during all deliberation on the case.

4. **Order of Business**

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

a. Call to order by the chairperson.
b. Roll call by the clerk.
c. Minutes of previous meeting.
d. Unfinished business.
e. Public hearing.
f. New business.
g. Communications and miscellaneous.
h. Other business.
i. Adjournment.

[Note: Although this is the usual order of business, the board may wish to hold the hearings immediately after the roll call in order to accommodate the public.]

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 clerk of the board of adjustment who shall record the date of receipt over his or her signature.

Appeals from an administrative decision taken under RSA 676:5 shall be filed within ___ days (30 days recommended) of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the board.

At each meeting, the clerk shall present to the board all applications received by him or her at least 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. **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.

3. **Public Notice**

a. Public notice of public hearings on each application shall be given in the manner prescribed in RSA 676:7.

b. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal and shall also be given to the planning board, city/town clerk, and other parties deemed by the board to have special interest.

c. The applicant shall pay for all required notice costs in advance.

4. **Public Hearing**

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

a. The chairperson 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 report on how public notice and personal notice were given.

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

d. 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.

e. Any member of the board, through the chairperson, 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 chairperson.

g. The applicant shall be called to present his appeal.

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

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

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

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

l. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chairperson not later than 3 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. The chairperson shall present a summary setting forth the facts of the case and the claims made for each side (see Findings of Facts form in Appendix C). Opportunity shall be given for correction from the floor.

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

5. **Decisions:** The board shall decide all cases within ____ days (30 recommended) 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 planning board, the board of selectmen, town clerk, property tax assessor and other town officials as determined by the board.

6. **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.

7. **Reconsideration by the Board / Motions for Rehearing:** 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]. Motions for Rehearing can only be received in the office of the board during normal business hours. (See *Cardinal Development v. Town of Winchester* [October 8, 2008].)

8. **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.

Records

1. The records of the board shall be kept by the clerk and made available for public inspection at (insert description of office or location) 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. 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. 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

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 city or town clerk and be available for public inspection pursuant to RSA 676:1.

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.

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, 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 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 chairperson 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 chairperson shall chair the joint hearing. If the other board is not the planning board, then the board of adjustment chairperson 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.