

**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 (RSA), 1983, Chapter 676:1, and the zoning ordinance and map of the town of New London, and any amendments thereto.

**Section 1.02**

**Members and Alternates**

- a) **Members:** The Zoning Board of Adjustment (ZBA) shall consist of five (5) Members, appointed by the Board of Selectmen.<sup>1</sup> Board Member terms shall be for three (3) years and staggered.<sup>2</sup>
- b) **Alternates:** Up to five (5) alternates may be appointed by the Board of Selectmen, with terms of three (3) years staggered<sup>3</sup>, 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.
  - a. 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.
- c) **Members and Alternates** must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member or alternate 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.

**Section 1.02d) Officers**

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<sup>1</sup> RSA 673:3

<sup>2</sup> RSA 673:5

<sup>3</sup> RSA 673:6

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~~(a)~~(1) A chair shall be elected annually by a majority vote of the board when a newly appointed board is convened.

~~(b)~~(2) A vice-chair shall be elected annually by a majority vote of the board when a newly appointed board is convened

~~(c)~~(3) All officers serve for one year and shall be eligible for re-election.

**Section 1.03 Meetings**

(a) 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.

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

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) 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.

(c) 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:

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- i) Expects to gain or lose upon the disposition of the case;
- ii) Is related to either party;
- iii) Has advised or assisted either party;
- iv) Has directly or indirectly given an opinion or formed an opinion;
- v) Is employed by or employs any party in the case;
- vi) Is prejudiced to any degree regarding the case; or
- ±vii) 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.

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- ~~(a) At the discretion of the chair, an organizational meeting shall be held in March at the New London town offices. Other meetings may be held on call of the 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.~~
- ~~(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.<sup>4</sup>~~
- ~~(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.<sup>5</sup>~~
- ~~(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 chair 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.<sup>6</sup>~~
- ~~(f) The recusal shall be announced by either the chair 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.~~

~~(a)~~

~~(g)~~**(b) Order of Business.** The order of business for regular meetings shall be as follows:

- (1) The chair shall call the meeting to order;

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<sup>4</sup>RSA 673:14, I.

<sup>5</sup>RSA 673:14, II. (2009)

<sup>6</sup>RSA 673:14, III. (2009)

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- (2) The chair shall conduct a roll call of board members present;
- (3) The chair 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

**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 date of the administrative 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; Proof of ownership~~
  - (e)(b) If another appears on behalf of the owner, written evidence establishing the agency relationship shall be included in the application;

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~~(c)~~(c) Scale drawings showing boundaries, property lines and existing monuments at the discretion of the Board; Town Tax Maps may be deemed insufficient where the subject of the application concerns waterfront property or special overlay districts;

~~(e)~~(d) 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. (TO DISCUSS, NEED CLARIFICATION ON THIS SECTION)

- (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 (note: NL Ordinance has a different definition of abutter that refers to 200-feet – INSERT SOMETHING HERE) 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 five (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.<sup>7</sup>
  
- (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.<sup>8</sup>
  - (1) The public hearing shall be held within 30 45 (INSERT NEW RSA REFERENCE EFFECTIVE 7/2019) days of the receipt of the ~~notice~~ of appeal application.
  - (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 services<sup>9</sup> 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 chair shall call the hearing in session and report on the first case.
- (b) The chair shall read the application and report on how public notice and personal notice were given.

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<sup>7</sup> RSA 676:7, I. (a) (current through 2009 Legislative Session)

<sup>8</sup> RSA 676:7, I. (b)

<sup>9</sup> Federal Express, United Parcel Service, DHL Worldwide or comparable carriers

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- (c) The 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.
- (e) The 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 chair
- (g) Any person who wants the board to compel the attendance of a witness shall present his request in writing to chair not later than three (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 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.<sup>10</sup> **NICOLE TO RESEARCH & REPORT BACK. WHEN DO WE DECIDE ON REGIONAL IMPACT?????????????**
- (k) At the conclusion of deliberations, the chair shall call for a vote.

**Section 1.07 Decisions.**

(a) The board, at its discretion, may announce or issue its decision at the hearing. If the board determines that further information is required to render a decision it may continue the matter without a finding. If the board of adjustment finds that it cannot conclude the public hearing within the time available, it may vote to continue the hearing to a specified time and place with no additional notice required.11

(a)(b) 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.12

<sup>10</sup> 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.

<sup>11</sup> RSA 676:7 V (amended 2017)

<sup>12</sup> RSA 676:3, I.

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~~(b)~~(c) 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 five (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. **13**

~~(e)~~(d) 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. **14**

~~(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~~ made available not more than five (5) business days after the meeting,<sup>15</sup>

**Section 1.09      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 one meeting immediately preceding the meeting at which the vote is to be taken.

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<sup>13</sup> RSA 676:3. II.

<sup>14</sup> RSA 676:3. III.

<sup>15</sup> RSA 91-A:2. II.

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**Section 1.10      Joint Meetings and Joint 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.<sup>16</sup>
- (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.<sup>17</sup>
- (c) Every local land use board shall be responsible for rendering a decision on the subject matter which is within its jurisdiction.<sup>18</sup>

**Section 1.11      Appeal From Board's Decision / Rehearing Requests**

- (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(c) 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.

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<sup>16</sup> RSA 676:2, I.

<sup>17</sup> RSA 676:2, II.

<sup>18</sup> RSA 676:2, III.

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FROM OSI HANDBOOK = Nicole, include this??? 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

**(e)**

- (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

(add signature lines & names for current ZBA members)

/s/

~~William Green~~

~~Douglas W. Lyon~~

~~Laurie DiClerico~~

~~W. Michael Todd~~

Date Received and recorded: ~~April 26, 2010, Volume XIII, Pages 73 through 78.~~ \_\_\_\_\_

~~/s/By Town Clerk (signature block) Linda M. Hardy~~

~~Town Clerk~~