

# DRAFT 13

## RULES OF PROCEDURE TOWN OF NEW LONDON, NH Zoning Board of Adjustment

### SECTION 1.01 AUTHORITY

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA), Chapter 676:1<sup>1</sup>, and the zoning ordinance and map of the town of New London, and any amendments thereto.

### SECTION 1.02 MEMBERS AND ALTERNATES

- a) Members and Alternates must reside in New London<sup>2</sup> and are expected to attend each meeting of the board to exercise their duties and responsibilities, and vote to approve, disapprove, or otherwise dispose of. Any member or alternate unable to attend a meeting shall notify the chairperson as soon as possible. Members, including the chairperson and vice-chairperson, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration. Members and alternates may serve on any other town board<sup>3</sup>.
- b) Members: The Zoning Board of Adjustment (ZBA) shall consist of five (5) Members, appointed by the Board of Selectmen<sup>4</sup>. ZBA Member terms shall be for three (3) years and staggered<sup>5</sup>.
- c) Alternates: Up to five (5) alternates may be appointed by the Board of Selectmen, with terms of three (3) years staggered<sup>6</sup>. Alternates should attend all meetings to familiarize themselves with the workings of the board, to stand ready to serve whenever a member of the board is unable to fulfill his/her responsibilities.

At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or disqualified member or who have not been appointed by the chairperson to temporarily fill the unexpired term of a vacancy<sup>7</sup>, 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 members and other alternates, the applicant, abutters and the public. Alternates shall not be allowed to vote or to make or second motions. 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 chairperson shall fully inform the public of the status of any alternate present and identify the members and activated alternates who will be voting on the application.

- d) Chairperson and Vice-Chairperson:
  1. A chairperson and vice-chairperson shall be elected annually by a majority vote of the board at the first meeting following town meeting
  2. Both members serve in the position for one year and shall be eligible for re-election.
  3. The vice-chairperson shall preside in the absence of the chairperson or with respect to any matter as to which the chairperson is disqualified, and shall have the full powers of the chairperson on matters that come before the board when so presiding.

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<sup>1</sup> RSA 676:1 (Last amended in 2010)

<sup>2</sup> RSA 673:3, I. (Last amended in 2010)

<sup>3</sup> RSA 673:7 (Last amended in 2019)

<sup>4</sup> RSA 673:3 (Last amended in 2010)

<sup>5</sup> RSA 673:5 (Last amended in 2010)

<sup>6</sup> RSA 673:6 (Last amended in 2019)

<sup>7</sup> RSA 673:12 (Last amended in 2009)

### SECTION 1.03 MEETINGS

- a) Regular Meetings: Regular meetings shall be held each month on a recurring date and time as set by the board. Other meetings may be held on the call of the chairperson provided public notice and notice to each member is given<sup>8</sup>. A meeting and application deadline schedule will be made available to help applicants with scheduling.
- b) Quorum: A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
1. The chairperson shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any application.
  2. If any member is absent from any meeting or hearing, or disqualifies himself/herself from sitting on a particular case, or if a member's seat is vacant (with no replacement yet appointed), the chairperson shall designate one of the alternate members to sit in place of the absent or disqualified member or to temporarily fill the vacancy<sup>9</sup>, and such alternate shall be in all respects a full member of the board while so sitting.
  3. Alternates shall be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the chairperson shall select the alternate who has not been activated for the longest time.
  4. If there are less than five members (including alternates) present, the chairperson 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.
  5. If the applicant opts to postpone due to less than a full board present, the board shall, before adjournment of that meeting, 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<sup>10</sup>.
- c) Disqualification: If any member finds it necessary to disqualify himself/herself from sitting in a particular case (a recusal)<sup>11</sup>, he shall notify the chairperson as soon as possible so that an alternate may be designated 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 may request the board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway, unless the information upon which the request is based is not disclosed to the board before the commencement of the public hearing. The vote shall be advisory and non-binding. [COMMENT FROM KATHARINE: Advisory to whom? Nowhere in the paragraph does it say who makes the final decision on this issue, so who is being advised? Also, if it is not binding, why take such a vote? I suggest we omit this sentence completely or clarify.] Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should disqualify himself/herself, members should review the questions that are asked of potential jurors to determine qualification<sup>12</sup>. A potential juror may be asked whether he or she:
1. Expects to gain or lose upon the disposition of the case;
  2. Is related to either party;
  3. Has advised or assisted either party;
  4. Has directly or indirectly given an opinion or formed an opinion;
  5. Is employed by or employs any party in the case;
  6. Is prejudiced to any degree regarding the case; or
  7. Employs any of the counsel appearing in the case in any action then pending in the court.

<sup>8</sup> RSA 91-A:2, II (Last amended 2018, effective 1/1/2019)

<sup>9</sup> RSA 673:12 (Last amended 2009)

<sup>10</sup> RSA 676:7 (Last amended 2019)

<sup>11</sup> RSA 673:14 (Last amended 2008)

<sup>12</sup> RSA 500-A:12 (Last amended in 1988)

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 remove themselves from the table and join the audience during the public hearing and during all deliberation on the case.

- d) Order of Business: The order of business for regular meetings shall be as follows:
1. The chairperson shall call the meeting to order;
  2. The chairperson shall conduct a roll call of board members present, and confirm the designation of any alternate to serve as a member at the meeting;
  3. Minutes of previous meeting;
  4. Public hearing in accordance with the procedures at Section 1.06 below;
  5. Any Other Business; and
  6. Adjournment.

The chairperson may change the order of business; for example, a matter attracting substantial public interest can be advanced to be considered early in a meeting.

#### **SECTION 1.04 APPLICATIONS**

- a) Each application for a hearing before the board shall be made on forms provided by the board and shall be submitted by the applicant to the town's Land Use and Assessing Coordinator, who shall record the date of receipt.
- b) Appeals from an administrative decision<sup>13</sup> shall be filed within thirty (30) days of the date of the administrative decision.
- c) All forms and revisions thereto shall be adopted by resolution of the board and shall become part of these rules of procedure.
- d) A completed application shall consist of the following materials:
  1. Application;
  2. Proof of ownership. If another person appears on behalf of the owner, written evidence establishing the agency relationship shall be included in the application; and
  3. Scale drawings showing boundaries, property lines and existing monuments. Town Tax Maps will be deemed insufficient where the subject of the application concerns setback issues. A survey less than ten (10) years old will be required if the application concerns sensitive site features such as wetlands, streams, or the property is located in any of the Town's Overlay zoning districts, such as the Shoreland Overlay District, Floodplain Overlay District, Wetland Conservation Overlay District, Streams Conservation Overlay District, or Steep Slope Overlay District, or any other districts which serve to protect local natural resources, and if any new structures are proposed, or any use is proposed which may reduce the setback to said natural features. If the survey is older than ten years, the applicant must affirm in writing that there are grounds to believe the survey remains reliable. (COMMENT NG: This is the language from the Building Permit FAQs – I suggest the ZBA adopt it into their own rules, rather than rely on the BP FAQs which may change and do not have the same authority as the zoning ordinance).
  4. The Zoning Administrator shall ensure that the application materials are complete before notice and hearing.
- e) The applicant shall prepare all applications and pay all applications costs.

#### **SECTION 1.05 PROCESS PRIOR TO PUBLIC HEARING; PUBLIC NOTICE**

- a) Public Hearing Timing: The public hearing shall be held within 45 days of the receipt of the application<sup>14</sup>.

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<sup>13</sup> RSA 676:5 (Last amended in 2010)

- b) Abutter Mailing: The applicant and every abutter (as defined in statute<sup>15</sup> and the Zoning Ordinance) shall be notified of the hearing by verified mail<sup>16</sup>, 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 application<sup>17</sup>.
- c) A public notice of the hearing shall be placed in a newspaper of general circulation in the area not less than five (5) days before the date fixed for the hearing
- d) Cost of Notice: 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 application without public hearing. Such a denial would be done “without prejudice” so they may re-apply in the future for the same matter
- e) Regional Impact: The Zoning Administrator or the Land Use and Assessing Coordinator should consider whether or not the application has potential for regional impact<sup>18</sup>. However, only the board (or another town land use board) may make the final determination concerning the potential for regional impact. This determination can be made at a regularly scheduled monthly meeting as an agenda item or the board could hold a special meeting solely to determine whether or not the application has potential for regional impact. If the board (or another town land use board) determines there is potential regional impact:
  - 1. Within five (5) days of the meeting at which the determination was made, the town must send copies of the minutes of that meeting, by certified mail, to the Regional Planning Commission (RPC) and to the affected neighboring municipalities.
  - 2. In addition, the town must submit a set of initial development plans to the RPC. The applicant bears the cost of providing and sending such plans.
  - 3. At least fourteen (14) days before the public hearing, the board must notify, by certified mail, all affected municipalities and the RPC of the date, time, and place of the hearing and of their right to testify concerning the development.
- f) For the purposes of these rules, communication with the ZBA shall be through written correspondence delivered in-hand to the Town Offices.

## **SECTION 1.06 PUBLIC HEARINGS**

- a) The chairperson shall call the hearing in session and report on the first case.
- b) The chairperson or a person designated by the chairperson shall report on the application and report on how public notice and personal notice were given.
- c) The chairperson 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 chairperson shall request all those present at the hearing to identify themselves for the record.
- f) Sufficient and fair opportunity to speak shall be given to those supporting and opposing the application, at the discretion of the chairperson.
- g) 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>19</sup>.

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<sup>14</sup> RSA 676:7, II (Last amended in 2019)

<sup>15</sup> RSA 672:3 (Last amended in 2002)

<sup>16</sup> RSA 21:53 (Last amended in 2019)

<sup>17</sup> RSA 676:7, I. (a) (Last amended in 2019)

<sup>18</sup> RSA 36:54 through 36:58 (Last amended in 2009)

<sup>19</sup> RSA 676:7, I. (a) (Last amended in 2019)

- h) Any person who wants the board to compel the attendance of a witness shall present his or her request in writing to the chairperson not later than three (3) days prior to the public hearing<sup>20</sup>.
- i) The board will hear 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 law.
- j) If an issue exists regarding whether the application has potential for regional impact, then, 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 determination of the board is that there is regional impact, it shall take the steps specified in Section 1.05(d) above<sup>21</sup>.
- k) At the conclusion of deliberations, the chairperson shall call for a vote.

**SECTION 1.07 DECISIONS**

- a) 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 application. The board, at its discretion, may announce or issue its decision at the public 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 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<sup>22</sup>.
- b) The board shall issue its final written decision 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<sup>23</sup>.
- c) Whenever the board votes to approve or disapprove an application (including a denial of a motion for rehearing), the minutes of the meeting at which such vote is taken, including the written decision shall be made available for public inspection within five (5) business days of such vote.<sup>24</sup>
- d) The board may require a decision, and/or plat or plan together with the decision, to be recorded at the registry of deeds. Any costs associated with the recording is the responsibility of applicant. Whenever a plat or plan is to be recorded with the Registry of Deeds the final written decision shall be included with or incorporated by reference on the plat to be recorded<sup>25</sup>.

**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 the New London Town Offices in accordance with the statutory requirement.
- b) Minutes of all meetings shall be made available for public inspection within five (5) business days of such vote.<sup>26</sup>

**SECTION 1.09 AMENDMENTS.**

- a) These rules of procedure may be amended by a majority vote of the board at a regular meeting<sup>27</sup>.

**SECTION 1.10 JOINT MEETINGS AND JOINT HEARINGS**

An applicant seeking a local permit may petition the board and the planning board to hold a joint meeting or hearing when the subject matter of the application or requested permit is within the responsibilities of

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<sup>20</sup> RSA 673:15 (Last amended in 1996)

<sup>21</sup> RSA 36:57 (Last amended in 2009)

<sup>22</sup> RSA 676:7, V (Last amended in 2019)

<sup>23</sup> RSA 676:3, I. (Last amended in 2009)

<sup>24</sup> RSA 676:3, II. (Last amended in 2009)

<sup>25</sup> RSA 676:3, III. (Last amended in 2009)

<sup>26</sup> RSA 91-A:2, II. (Last amended in 2008)

<sup>27</sup> RSA 676:1 (Last amended in 2010)

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 application or requested permit. In that situation, the appropriate agencies that are involved shall determine which board shall be in charge.<sup>28</sup>

- a) Procedures for joint meetings or hearings relating to testimony, notice of hearings, and filing of decisions shall be consistent with the procedures established by New Hampshire law for individual boards.<sup>29</sup>
- b) The board and the planning board each will be responsible for rendering a decision on the subject matter that is within its jurisdiction.<sup>30</sup>

### **SECTION 1.11 REHEARING**

- a) Filing Deadline. A motion for the board to reconsider its decision must be filed by a petitioner<sup>31</sup> within thirty (30) days after the decision of the board.<sup>32</sup>
- b) Statement of Grounds. A motion for rehearing<sup>33</sup> shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.
- c) Persons Who May Move for Rehearing. The motion for rehearing shall be filed only by a party entitled to file a motion for rehearing<sup>34</sup>.
- d) Extension of 30-day Filing Limit. If the petitioner shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within five (5) business days after the vote pursuant to Section 1.07(c) above, the petitioner shall have the right to amend the motion for rehearing within thirty (30) days after the date on which the written decision was actually filed<sup>35</sup>.
- e) Grant or Denial of Rehearing: The board shall, within thirty (30) days of the filing of the motion for rehearing, either grant or deny the application, or suspend the order or decision complained of pending further consideration.<sup>36</sup>
- f) New Hearing: If the board grants a motion for rehearing, the new public hearing shall be held within thirty (30) days of the decision to grant the rehearing, provided that all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall be the same procedure as the initial hearing.<sup>37</sup>
- g) Appeal to Superior Court Upon Denial of Motion for Rehearing: Any person aggrieved by any order or decision of the board may apply, by petition, to the superior court within thirty (30) days after the date upon which the board voted to deny the motion for rehearing.<sup>38</sup>

ADOPTED by the New London Zoning Board of Adjustment at their public meeting held on \_\_\_\_\_

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<sup>28</sup> RSA 676:2, I. (Last amended in 1983)

<sup>29</sup> RSA 676:2, II. (Last amended in 1983)

<sup>30</sup> RSA 676:2, III. (Last amended in 1983)

<sup>31</sup> RSA 677:1 thru 677:14 (Last amended in 2014)

<sup>32</sup> RSA 677: (Last amended in 2009)

<sup>33</sup> RSA 677:2 (Last amended in 2009)

<sup>34</sup> RSA 677:2 (Last amended in 2009)

<sup>35</sup> RSA 677:2 (Last amended in 2009)

<sup>36</sup> RSA 677:3, II (Last amended in 1994)

<sup>37</sup> RSA 676:7 (Last amended in 2019)

<sup>38</sup> RSA 677:4 (Last amended in 2009)