



Milford Zoning Board of Adjustment

Rules of Procedure

Amended May 3, 2012

I. Authority

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance of the Town of Milford.

II. Title and Adoption

- A. These rules may be cited as the Milford Zoning Board of Adjustment Rules of Procedure.
- B. These rules shall be adopted at a regular meeting of the Zoning Board and shall be placed on file with the town for public inspection.
- C. These rules shall be effective upon adoption by a majority of the Board and when they have been voted on by a majority of the Board and filed with the office of the Town Clerk.

III. Members and Alternates

- A. Members must be Milford residents and are expected to attend each meeting of the Board to exercise their duties and responsibilities in a professional and impartial manner. Any member unable to attend a meeting shall notify the Chair or the Zoning Board Administrative Assistant as soon as possible.
- B. Members shall be appointed in staggered three (3) year terms. The membership of the Board shall be appointed in such a manner so that no more than three (3) members shall be appointed (or re-appointed) each year.
- C. Vacancies in the membership of the Board occurring other than through the expiration of a term of office shall be filled in the manner provided by RSA 673:12.
- D. Up to five (5) 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.

IV. Officers

- A. A Chair shall be elected annually by a majority of the Board in the month of March. 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.
- B. A Vice-chair shall be elected annually by a majority vote of the Board in the month of March. 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.
- C. All officers shall serve for one (1) year and shall be eligible for re-election.

- D. If the Chair and Vice-chair are both unable to serve due to absence or disqualification, the remaining Board members shall elect an alternate Chair to serve until the Chair or vice-chair can resume the duties of the chair.
- E. The Zoning Board Administrative Assistant for the Town of Milford, who shall not be a Board member, 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. All official records shall be located in the Office of Community Development in the Milford Town Hall.

V. Meetings

Regular meetings shall normally be held in the Board of Selectmen's meeting room in the Milford Town Hall at 7:00 pm on the first and third Thursday of the month. Other meetings, such as site walks and visits, may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.

VI. Quorum

- A. A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members. If any regular Board member is absent from any meeting or disqualifies himself from sitting on a particular case, the Chair shall designate one (1) of the alternative 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.
- B. In the event it is not feasible to constitute a five (5) member Board, the Chair shall, prior to the commencement of any public hearing, allow the applicant the opportunity to elect to either proceed with the Board then sitting and sign a waiver waiving their rights to a five (5) member Board, or postpone the hearing until the next meeting of the Board at which five (5) members are present.

VII. Disqualification

If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the Chair or secretary 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. Either the Chair or the member disqualifying him/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself from the Board table during the public hearing and during all deliberation on the case.

VIII. Ex Parte Communications

- A. Board members shall avoid ex parte communications with the applicant, abutters, or any other Board members. In the event that ex parte contact occurs, Board members shall disclose the nature and date of the communication at the beginning of the public hearing.
- B. Board members shall not seek input or advice from any source other than consulting with the Office of Community Development or other town officials for clarification regarding the application outside of the public hearing process.

- C. Applicants and interested parties should direct questions regarding the process to the Zoning Administrator or designee. If an applicant or interested party contacts a Board member, the member should refer that person to the Zoning Administrator or designee, or advise the person to submit information to the Board in writing.
- D. All Board members are subject to the town wide email policy.

IX. Applications

- A. Each application for a hearing before the Board shall be made on forms provided by the Office of Community Development and shall be presented to the Zoning Administrator or designee who shall record the date of receipt.
- B. Appeals from an administrative decision taken under RSA 676:5 must be filed within thirty (30) days of the decision. The date the decision was rendered shall not be counted in the thirty (30) day period. Under RSA 21:35.II, if the specified date falls on a Saturday, Sunday or legal holiday, the document shall be deemed timely filed if it is received by the next business day.

X. Public Notice

- A. Public notice of public hearings on each application shall be given in the local publication and shall be posted in two (2) places at the Milford Town Hall not less than five (5) days before the date fixed for the hearing.
- B. Notice shall include the name of the applicant, description of the 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.
- C. Personal notice shall be made by certified mail to the applicant and all abutters not less than ten (10) days before the date of the hearing.
- D. Notice shall also be given to the Planning Board, town clerk, and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice.
- E. The applicant shall pay for all required notice costs in advance.

XI. Public Hearings and Meetings

Complete instructions for conducting a public hearing may be found in the current Zoning Board of Adjustment Handbook, prepared by the NH Office of Energy and Planning.

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

1. The Chair shall call the hearing in session.
2. The Board shall consider any old business.
3. The Chair shall read the public notice into the record.
4. The Chair shall read the list of abutters into the record.
5. The applicant will present his/her application.
6. Members of the Board may ask questions at any point during testimony.
7. The Chair shall open the hearing to public comment. Those members of the audience who wish to speak must state their name and address.

8. The Chair shall control the conduct of the hearing and may impose reasonable limitations upon the number of times and the length of time any given person may speak so long as everyone with a legitimate interest is given a reasonable opportunity to state their views and present evidence. All questions and comments must be directed to the Chair.
9. After all interested parties have been given a reasonable opportunity to present their evidence, the Chair or designee shall declare the public portion of the hearing closed. Any further public input at the current hearing or subsequent hearings will require that the public hearing be formally reopened.
10. Once the public portion of the hearing is closed, the Board shall discuss and act upon the application.
 - a. The public shall not be permitted to participate in the Board's deliberations, but the Chair may direct questions to members of the public and receive answers during the Board's deliberations.
 - b. Except as provided in the Right to Know Law (RSA 91-A), the deliberations of the Board shall be held in open meeting where the public can hear.
 - c. The Board has the option to end the public hearing at 11:00 pm and the current case will be continued to the next regularly scheduled meeting.
11. The Board shall consider any other business.
12. If there is a quorum of members present who were sitting at the respective meeting, the minutes of that meeting shall be submitted for approval.
13. Once all business before the Board has been concluded, the Chair shall adjourn the meeting.
14. If a case has been tabled or is appealed, the same Board members who were sitting on the original case shall sit on the tabled or appealed case, if possible.

XII. Decision

- A. Subject to Section XI, the Board shall normally decide all cases on the night of the public hearing and shall approve, approve with conditions, or deny the request. With agreement of the applicant, the Board may table the case before it to a later date to allow for clarification or presentation of additional evidence. Any application that is not approved or approved with conditions shall be considered denied. With agreement of the applicant, the Board may table the case before it to a later date to allow for clarification or presentation of additional evidence.
- B. Notice of the decision will be made available for public inspection within five (5) business days, as required by RSA 676:3 and will be sent to the applicant by regular mail.
- C. If the request is denied, the notice shall include the reasons therefore.
- D. The notice shall also be given to the Planning Board, Code Enforcement Officer and other town officials as determined by the Board.

XIII. Motions for Rehearing

- A. Any Motion for Rehearing must be filed during normal business hours in the office of the Board.
- B. Any member of the Board may request that the Board reconsider its decision, provided it is done within the statutory 30-day period of the original decision.

- C. In considering a Motion for Rehearing, the Board shall first determine if the party requesting the rehearing has standing as defined in RSA 677.2.
- D. A Board meeting to consider a Motion for Rehearing shall be considered a public meeting subject to the minimum posting requirements of the Right to Know Law and no formal notice is required to the applicant, petitioner, or abutters. It shall not be considered a public hearing and no testimony shall be taken. All the Board is acting upon is the motion in front of it (what has been submitted) and shall not involve comments by the applicant, petitioner, or abutters.
- E. If possible, the same Board members from the original hearing should be present at the rehearing.
- F. The Board will make every effort to ensure that a full five (5) member Board is present for the consideration of any appeal.
- G. Alternates appointed in absence of a regular member, and participating in a public hearing on an appeal, shall retain the seat of the regular member when Board discussions and decisions pertaining to that appeal take place.

XIV. Records

- A. The records of the Board shall be kept by the Office of Community Development and made available for public inspection in accordance with RSA 673:17.
- B. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made in accordance with RSA 676:3.
- C. 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 five (5) business days of the public meeting in accordance with RSA 91-A:2-II

XV. Joint Meetings and Hearings

- A. RSA 676:2 provides that the Zoning Board of Adjustment may hold joint meetings or hearings with other land use boards including the Planning Board, the heritage commission and the conservation commission. Each Board shall have discretion as to whether or not to hold a joint meeting with any other land use Board.
- B. Joint business meetings with any other land use Board may be held at any time when called jointly by the Chair of the two (2) boards.
- C. A public hearing on any appeal to the Zoning Board of Adjustment will be held jointly with another board only under the following conditions:
 - 1. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - 2. 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
 - 3. 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
 - 4. The other board shall concur in these conditions.

XVI. 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 two (2) consecutive meetings preceding the meeting at which the vote is to be taken.

XVII. 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 or the Board and waiver would not be contrary to the spirit and intent of the rules.

Signatures

We hereby attest that this is a true copy of the Rules and Procedures as adopted by the Milford Zoning Board of Adjustment on May 3, 2012.

