



## Milford Zoning Board of Adjustment

### Rules of Procedure

**Changes from 4.05.12 (1<sup>st</sup> reading) are highlighted**

#### 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 and map~~ **Zoning Ordinance** of the Town of Milford.

#### II. ~~Title and Adoption and Amendment~~

- A. These rules may be cited as the Milford Zoning Board of Adjustment Rules of Procedure.
- B. These rules shall be adopted ~~following at a public hearing~~ **regular meeting of** by the Zoning Board **and shall be placed on file with the town for public inspection.** ~~The hearing shall be noticed by a legal notice published not less than ten (10) days prior to the hearing in a local public newspaper and said notice shall contain a summary of the provisions herein, together with the notation that the full text is available upon request.~~
- 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.

~~These rules may be amended and revised in the same manner as the initial adoption.~~

#### 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 Chairman 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 chairman shall be elected annually by a majority of the Board in the month of March. The chairman 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-chairman shall be elected annually by a majority vote of the Board in the month of March. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters which come before the Board during the absence of the chairman.

C. All officers shall serve for one (1) year and shall be eligible for re-election.

D. If the chairman and vice-chairman are both unable to serve due to absence or disqualification, the remaining Board members shall elect an alternate chairman to serve until the chairman or vice-chairman can resume the duties of the chair.

~~C~~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 chairman 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. ~~The board will make every effort to ensure that a full five (5) member board is present for the consideration of any appeal.~~ If any regular Board member is absent from any meeting or disqualifies himself from sitting on a particular case, the chairman 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. ~~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. 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.~~

B. In the event it is not feasible to constitute a five (5) member Board, the chairman shall, prior to the commencement of any ~~proceeding~~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 chairman 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 chairman 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/Decisions**

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** ~~If the thirtieth (30<sup>th</sup>) day falls on a Saturday, Sunday or Town legal holiday, the document shall be deemed timely filed if it is received by the appeal shall be filed no later than the last regular~~**next** ~~business day preceding the Saturday, Sunday or Town holiday.~~

### **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**

A. Complete instructions for conducting a public hearing may be found in the ~~October 2010~~ **Current Zoning Board of Adjustment Handbook** ~~Zoning Board of Adjustment Procedures for Meetings~~, prepared by the NH Office of Energy and Planning, ~~March 2010~~.

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

1. The chairman ~~or designee~~ shall call the hearing in session.
2. The Board shall consider any old business.
3. The chairman ~~or designee~~ shall read the public notice into the record.
4. The chairman ~~or designee~~ 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 chairman ~~or designee~~ shall open the **meeting hearing** to public comment. Those members of the audience who wish to speak must state their name and address.
8. The chairman ~~or designee~~ 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 chairman.
- 8.9. After all interested parties have been given a reasonable opportunity to present their evidence, the chairman or designee shall declare the public portion of the hearing closed. Any further public input at the current meeting or subsequent meetings will require that the public hearing be formally reopened.
- 9.10. 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 chairman ~~or designee~~ 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.
- 10.11. The Board shall consider any other business.
- 11.12. 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.
- 12.13. Once all business before the Board has been concluded, the chairman ~~or designee~~ shall adjourn the meeting.
- 13.14. 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 (10), 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. **For further discussion: reference 4.5.12 minutes lines 47-115**

**(See RSA 676:3 Issuance of decision does include the wording "or deny the request" also RSA 673:33 III does not cite anything about denial. )**

**Proposed language: Subject to Section XI (10), the Board shall normally decide all cases on the night of the public hearing and shall approve or approve with conditions. 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, **Ceode Eenforcement Oeofficer** 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

### **~~XIV~~XV. Joint Meetings and Hearings**

**(Current wording matches the RSA and communities in NH have held joint public hearings – ref: Greenfield PB and ZBA Joint Public Hearing on Feb 10, 2010. Should there be more discussion before changing this language? Ref: ZBA minutes 4.05.12 lines 118-119)**

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 chairman of the two (2) boards.

C. A public hearing on any appeal to the **Zoning** Board of ~~adjustment~~ **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 chairman shall chair the joint hearing. If the other board is not the Planning Board, then the Board of adjustment chairman 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.

**XVXVI. 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 20, 2010~~ \_\_\_\_\_.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**Town of Milford  
Zoning Board of Adjustment Minutes  
April 5, 2012**

**OTHER BUSINESS:**

K. Johnson stated the next item on the agenda is the first reading of the Revisions to the Rules of Procedure.

F. Seagroves questioned whether it was the first or second reading.

K. Johnson said it is the first reading because the Board did a first reading of one set but there were additional changes that would have generated a second reading of the first set of changes and first reading of the second set of changes, so the Board combined them. Then it got delayed.

K. Johnson asked if everyone had reviewed the revisions.

All members responded that they have reviewed them.

K. Johnson asked if anyone other than himself had comments.

F. Seagroves referenced IX.B (page 3) regarding "legal holiday." What is considered a legal holiday?

K. Johnson said RSA 21:35 uses the terms "Saturday, Sunday or legal holiday", so whatever the RSA considers a legal holiday.

Z. Tripp referenced the date of October 10, 2010 in Section XI Public Hearings and asked if that shouldn't be kept generic so it wouldn't need to be changed every time?

K. Johnson said one of his comments was to change that to the word "current" because there is a new edition every December .

K. Johnson said he had some changes that are minor grammatical. On page 1, Section II, "Title, and Adoption", the comma is not needed. On page 3, Section XI "Public Hearing/Meeting" should say "hearings and meetings" to match the RSA. On page 4 he proposed deleting "or designee" in all locations because in the Rules of Procedure it specifies that either the Chairman or Vice Chairman will chair the Board; if neither is available the Board will elect a temporary Chairman. So at all times a Chairman is running the meeting and, therefore, should be referred to as such.

L. Horning asked why the language is in there.

K. Johnson said because he put it there. But now he's decided he wants it out. He thinks it's unnecessary. When a Board meets there is always a Chairman; there has to be a Chairman of the Board; therefore, there is no need for a designee.

F. Seagroves said it states if there is no Chairman or Vice Chairman they will designate a temporary Chairman.

K. Johnson said right. But there is still a Chairman - a Chairman pro tem.

K. Johnson suggested in Item #7, "Chairman shall open the meeting to public comment" changing "meeting" to "hearing." Every time the Board gets together it is a meeting. But not every meeting is a hearing. Only during hearings does the Board take testimony; they do not take testimony during meetings. At present, they are having a meeting.

L. Horning said that is correct.

K. Johnson said that is a clarification that needs to be made.

L. Horning asked whether in Section XI, # 13, is he going to remove the word "designee?"

K. Johnson said yes, and on all locations of "or designee."

K. Johnson said the next one is one they will probably want to discuss again. It is specific to discussions of the current Board. Page 4, Section XII Paragraph A: "Subject to Section XI (10) {strike the (a)}, the board shall normally decide all cases on the night of the public hearing and shall approve, approve with conditions, or deny the request. " The change he is submitting, is that the Board shall either" approve or approve with conditions." Because the law clearly specifies that three votes are required to pass an

49 application, and if that application does not receive three votes to pass it is automatically denied. He  
50 thinks that should be made clear in the rules of procedures. And the Board does not need to go through  
51 the procedure of asking for a motion, seconding the motion and saying the motion is denied. Because  
52 the fact that it has not been approved is a denial.

53 Z. asked a question.

54 K. Johnson said they are making the application which states they must have three votes to approve. If  
55 it does not receive three votes it is not approved.

56 F. Seagroves and S. Winder asked whether that is in the Handbook.

57 K. Johnson said it is an RSA, not in the handbook. What he wants to do is delete the requirement to  
58 specifically vote on denials. It is unnecessary.

59 Other Board members said there was no problem, but L. Horning said she is conflicted about it.

60 K. Johnson said the State RSAs require the Zoning Board have rules of procedure which the public can  
61 review.

62 L. Horning said she thinks the whole voting process of denial is –she understands it can be repetitive  
63 because they can approve it, approve with conditions or not approve it – but feels sometimes it is  
64 clarification for the people.

65 F. Seagroves said what is needed is when the Chair asks how you vote, you say no.

66 Z. Tripp asked whether they need to make a motion to approve.

67 L. Horning said they do have to make a motion to approve or make a motion to deny.

68 K. Johnson said they don't have to make a motion to deny. No one moves to approve it.

69 F. Seagroves said they (Board members ) have to say no.

70 K. Johnson said no. They simply note in the record that there was no motion to approve. Therefore, you  
71 cannot have three votes to approve it as required by state law. Therefore you are denied.

72 F. Seagroves said if it goes to court then somebody is going to say “well, how did he really think about  
73 this?”

74 K. Johnson said you will have already stated that when the Board goes over the conditions. That is a  
75 matter of public record – “does this variance meet the spirit? No.” That is part of the process. And that  
76 is part of the public record where the Board goes down those criteria, i.e. “Can this be granted without  
77 diminishing abutting property value?” and you say “no.” Then you are bound to vote no to approval. You  
78 can't say you didn't meet conditions and then vote to approve.

79 L. Horning said she understands. The Board members all know that. She's concerned it will create  
80 confusion for the public.

81 Z. Tripp said the citizens of Milford.

82 K. Johnson said just put a statement in here that any application is not approved is automatically denied.  
83 That's what the RSA says. He's just trying to bring all rules of procedure in line with State statutes.

84 F. Seagroves said if the vote is taken and nobody approves it, then it is denied.

85 S. Winder said it would be more confusing to say do we have a motion to deny and then vote to deny.

86 L. Horning said that's generally the consensus and there has not been confusion with that.

87 K. Johnson and Z. Tripp said there have been instances.

88 Z. Tripp said they should word it here so that it is very clear.

89 L. Horning said it will cause confusion if there is no voting on it. That's her perspective. She feels it will  
90 create more confusion this way than if they vote on a denial. Because it's pretty standard procedure no  
91 matter where you go. She is concerned about that.

92 K. Johnson asked if her concern would be addressed with a statement that says if the application is not  
93 approved, then the application has been denied.

94 L. Horning said if you are going to make that statement.

95 K. Johnson said absolutely.

96 L. Horning said she's not necessarily saying clarifying the application has been denied on camera, as  
97 long as someone is clarifying that the application is denied. If K. Johnson says it at the hearing so then  
98 people understand this is the conclusion of the matter. To her, that's an open ended statement, so she  
99 would like to see some kind of concluding statement.

100 K. Johnson said absolutely. It is part of the process where you have to explain to the applicant he was  
101 either approved or denied. If approved, everybody else has 30 days to appeal. If denied, the applicant  
102 has 30 days to appeal.

103 L. Horning said she understands that and the Board knows that because they are subjected to it. But we  
104 have some people who come in who may not know.

105 S. Winder said they've never seen us before.

106 L. Horning said they've never seen us before, they are intimidated. We are sitting here. There is some  
107 fear. Maybe they don't know or they're not entirely aware of the ordinance. She feels it is a matter of  
108 courtesy to the applicant that we give them a sense of closure. That's all she is saying.

109 K. Johnson said that what he is saying is that it is a legal requirement that the Board tell the applicant  
110 "you have been approved" or "you have not been approved and there is a 30 day appeal period."  
111 By law, he must state that at the end of every hearing.

112 L. Horning said right, she would be more comfortable if we just restructure the language. She would  
113 rather not have it entirely eliminated.

114 K. Johnson said one more housekeeping item is in Paragraph 12, Line D, "code enforcement officer "  
115 should be in upper case. On page 5, under "Joint Meetings and Hearings: in the text, paragraph A where  
116 it says "the Zoning Board of Adjustment may hold joint meetings or hearings" that needs to be changed  
117 to "joint meetings" because we can hold joint meetings but not joint hearings.

118 In Section IV, Section B there is a funny symbol before "RSA" and in Section C before "in accordance  
119 with."

120 K. Johnson said on page 6, under 17, Waivers "Any portion of these rules of procedure may be waived in  
121 such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the  
122 applicant" he would like to have added "or the Board".

123 L. Horning said that is a good point.

124 K. Johnson continued "and waiver would not be contrary to the spirit and intent of the rules."  
125 S. Winder agreed.

126 Z. Tripp asked if the Board votes on waivers.

127 K. Johnson said he doesn't know.

128 L. Horning said generally

129 K Johnson said there is no procedure in there for waiving these procedures.

130 L. Horning said she thinks voting as Zack brought up would be an adequate procedure.

131 K. Johnson said that would be where, for instance, Laura might propose to waive the requirement for  
132 Paragraph 10B 2 for this hearing and we'd all say yes.

133 F. Seagroves said going back to XII, Decisions, about the Board "shall normally discuss all cases on the  
134 night of the public hearing and shall approve or "He doesn't see anything in there addressing if they  
135 suddenly run past 11 pm or 12 pm.

136 K. Johnson said it is in there in Section XI -10c. "The Board has the option to end the public hearing at  
137 11:00 pm and the current case will be continued to the next meeting." Where it says "next meeting" he  
138 would like to change to read to the "next regularly scheduled meeting."

139 L. Horning agreed.

140 K. Johnson said that clarifies whether they have a whole special meeting.

141 K. Johnson asked the Board if he should submit the discussed changes to Shirley and then if the Board all  
142 agree to those changes then it would be the second reading.

143 All Board members agreed.

144  
145 **Election of Officers:**  
146 K. Johnson said he is happy to continue as Chair if the Board desires. He is also happy to turn it over to  
147 anyone else who would like the experience.  
148 K. Johnson opened nominations for Chairman for the next Board year.  
149 L. Horning nominated K. Johnson as Chair.  
150 S. Winder seconded.  
151 K. Johnson asked for any other nominations. There were none.  
152 K. Johnson requested a motion to cease nominations.  
153 Z. Tripp made a motion to cease nominations.  
154 F. Seagroves seconded.  
155 All voted in favor of ceasing nominations.  
156 K. Johnson called for a vote for election as Chairman  
157 All voted in favor. Kevin Johnson was elected as Chairman  
158 K. Johnson opened nominations for Vice Chairman  
159 Z. Tripp made a motion  
160 L. Horning seconded.  
161 K. Johnson asked for motion to cease nominations.  
162 L. Horning made motion to cease nominations.  
163 Z. Tripp seconded.  
164 All voted in favor of closing nominations for Vice Chair.  
165 All voted in favor of electing F. Seagroves as Vice Chairman.  
166 F. Seagroves was elected Vice Chairman.  
167 K. Johnson asked if there were any other issues . There being none, the Board proceed to approval of  
168 minutes of previous meetings.