

POLICY AND PROCEDURES

In accordance with RSA 676:1 and the provisions of Article XV of the Derry Zoning Ordinance, this policy and procedure has been adopted by the Zoning Board of Adjustment. It describes the rules under which the Board operates.

In general, The Board operates under the standard procedures contained in the Board of Adjustment in New Hampshire: a Handbook for Local Officials, prepared by the New Hampshire Office of State Planning. The following sections augment the handbook and delineate the specific rules for operation of the Zoning Board of Adjustment in Derry, New Hampshire.

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SECTION I

MEMBERSHIP –

The Zoning Board of Adjustment shall consist of five (5) permanent members and up to five (5) alternate members. Alternate members shall sit only in the absence of a permanent member, and if a member disqualifies himself or cannot act in a particular case, he shall so notify the Chair who shall seat an alternate member. An alternate member shall have all the powers and duties of a permanent member on any cases under consideration on which the permanent member is unable to act.

SECTION II

OFFICERS, MEMBERS, ALTERNATES –

- 1) Composition – The officers of the Zoning Board of Adjustment shall be comprised of a Chair, Vice-Chair and Secretary.
- 2) Eligibility – Only permanent members of the Board shall be eligible to hold office. No member shall hold more than one (1) office at a time.
- 3) Term of Office – All officers shall serve one (1) year and shall be eligible for re-election.
- 4) Elections – Officers shall be elected annually in the month of April, as provided by the Town Charter, with the term of office to end in March. A special election may be held any time when any officer cannot serve through expiration of appointment, resignation, or other reason. Only permanent members of the Board shall be eligible to elect officers. Officers shall be elected by a majority of the Board.
- 5) DUTIES – OFFICERS:
 - a. Chair – The Chair shall preside over meetings and hearings, appoint such committees as directed by the Board, and shall execute documents in the name of the Board. The Chair may engage attorneys for the Board with the consent of the Board, or in case of an emergency, subject to the approval of a majority of permanent board members by telephone or email.

- b. Vice-Chair – The Vice-Chair shall have all the powers, duties and responsibilities of the Chair in his absence.
- c. Secretary – The secretary, or designee appointed by the Chair shall review all application packets prior to presentation to the Board to insure all data required by the Board is provided (Section IV) and shall instruct the clerk to notify applicants of any deficiencies. The secretary shall have all the powers of the Chair in the absence of both the Chair and Vice-Chair.
- d. Acting Chair - In the absence of all elected officers, an acting Chair shall be elected by the members present, including alternate members, to preside over the meeting or hearing. The acting Chair shall have all the powers, duties and responsibilities of the Chair on matters which come before the Board.
- e. Clerk – A clerk shall be engaged by the Town Council or its designee. The duties of the clerk shall include, at a minimum, maintaining Board records, preparing agendas as directed by the Chair, and posting of meetings and hearings as required by Section VI, Public Notice.

6) DUTIES – MEMBERS:

- a. Members are appointed by the Town Council for varying terms not exceeding three years.
- b. shall attend scheduled meetings of the Zoning Board of Adjustment.
- c. shall if unable to attend, notify the Chairperson, Vice Chair and/or clerk.
- d. must take advantage of training programs at least annually and if possible within 6 months of being appointed. In most cases that training is paid for by the Town.
- e. is encouraged to pick up meeting packets when made available by the clerk.
- f. is encouraged to drive by and observe the property involved in the pending case(s). Members are not allowed by law to trespass on the property or to engage in conversation with the applicant or abutters.
- g. shall be courteous to the applicant or his/her representative
- h. shall maintain decorum and extend courtesy to the Chair and other members/alternates.
- i. shall inform the Chair prior to the call for the applicant to present their case whether they wish to recuse for personal/pecuniary reasons. “recusing” means that Members may not participate in the Question period, Deliberative session, or the Vote. Unless the member wishes to speak in favor or against the application, the member does not have to vacate the dias. An alternate shall be appointed to replace the member who recuses

- j. If the Member wishes to step down from a case for other than personal or pecuniary reasons, an alternate will be appointed to replace the member. The member is not required to sit in the audience and may participate in the Question period but may not participate in the Deliberative Session or the vote.

7) DUTIES – ALTERNATES

- a. all applicable duties listed for members except that if not seated by the Chair, they may not participate in the Deliberative session and vote.
- b. are encouraged to attend all regularly scheduled meetings.
- c. Alternates are not required to sit in the audience when cases are presented, deliberated or voted on.

SECTION III**MEETINGS/HEARINGS –**

1. Regular meetings/hearings shall be held at a place designated by the Board at 7:00 p.m. on the first and third Thursdays, provided there is business or a case scheduled to be heard. Other meetings may be held on call of the Chair.
2. The Board shall have the authority to modify the schedule of meetings.
3. Quorum – A quorum for regular business shall consist of a least three (3) members. Any motion or case before the Board shall require a minimum of three (3) yes votes to pass the motion or uphold the case.
4. Order of Business – The order of business for meetings/hearings shall be as follows:
 - a. Identification of members by the Chair.
 - b. Hearings on appeals/cases or other business before the Board.
 - c. When less than 5 members are sitting, the Chair shall notify the applicant that a minimum of three (3) votes are still required to pass the motion or uphold the case.
 - d. Disposition of appeals/cases or other business under consideration.
 - e. Approval of minutes of previous meetings.

5. Public Hearings – The conduct of public hearings shall be governed by the following rules:
- A. The Chair shall call the meeting to order and read the general rules of procedure (b through m below).
 - B. The Chair shall appoint an alternate if any member steps down or recuses themselves.
 - 1. Any member who wishes to recuse for any particular case for personal or pecuniary reasons should indicate so. The recused member may not participate in the applicant's case in any way. That member is not required to sit in the audience unless he/she wishes to speak for or against that case.
 - 2. Members who wish to step down for other reasons may remain seated on the platform but cannot participate in the deliberative session or vote, but may ask questions of the applicant.
 - 3. During the hearing of any case, questions for the applicant and others must be recognized by the Chair. Having been recognized, the member or alternate may proceed with the question.
 - 4. Questioning of the applicant or other parties should bear directly on the case as presented and should be short and to the point.
 - C. The Chair shall read the case notice.
 - 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. The Chair, at his/her discretion, may require these persons appearing before the Board, to be placed under oath. He shall state at the beginning of the meeting what the procedure will be. If the swearing in procedure is required, then all witnesses shall be sworn in.
 - E. The applicant shall be called to present his/her case.
 - F. The building official, where applicable, shall present evidence on any action taken with regard to the property.
 - G. Those in favor of the case shall be allowed to speak
 - H. Those in opposition to the case shall be allowed to speak.
 - I. The applicant and those in favor shall be allowed to speak in rebuttal.
 - J. Those in opposition to the case shall be allowed to speak in rebuttal.
 - K. Any party to the case who desires to ask a question shall be allowed subject to
 - a. the discretion of the Chair.
 - L. Members and Alternates of the Board may ask questions at any point during the
 - a. testimony.

- M. Any member of the Board, through the Chair, may request any party to the
 - a. case to reappear.
- N. The hearing on the case shall be declared closed.
- O. Deliberative session to review evidence and formulate any motions upon
 - a. request of any member and after majority vote by the Board. Only those
 - b. members sitting shall adjourn to the deliberative session and shall vote on the
 - c. matter/relief sought in the application.
- P. The Board may hear all cases before voting or may vote on each case after it is
 - a. heard.

6. Joint Meetings –

- a. The Board may hold joint meetings with other land use boards pursuant to RSA 676:2. Whether to hold a joint meeting shall be within the discretion of the 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 boards.
- c. A public hearing on any case before the 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 a case or application to both boards regarding the same subject matter; and
 - 2. If the other board is the Planning Board the Planning Board Chair shall chair the joint meeting. 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.

SECTION IV

APPLICATIONS/APPEALS/DECISIONS -

- 1. Each application shall be made as follows:
 - a. On forms provided by the Town and shall be submitted at the office of the Code Enforcement/Board of Adjustment. For purposes of this section, the office of the

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Board of Adjustment shall be 14 Manning St., Derry, New Hampshire. the clerk shall record the date of receipt of any application.

- b. When appeals or applications are submitted for filing, they shall be examined for completeness and accuracy, and particularly to determine whether all information required on the form has been submitted. Where information is lacking or inadequate at the time of submission, the applicant or appellant shall be notified of the deficiency.
 - c. The applicant shall provide current names and addresses of abutters of record and shall specify if a variance or exception has previously been granted for the property.
 - d. The Clerk shall prepare public notices advertising the date, time and place of hearing and shall notify the applicant and abutters by certified mail in accordance with RSA 676:7. There shall be a fee, as determined by the Town Council, to cover the administrative expenses of the Board. This fee shall be payable with the filing of the application for a hearing or a rehearing.
 - e. On its own motion, or on approval of requests by applicants, appellants, or their authorized agents, the board may defer the hearing of a case or provide for continuances of a case on which hearings have begun. Such deferrals or continuances shall be permitted only for good cause, stated in the motion, and unless the time and place is stated, shall require new public notice, with fees. The fees shall be paid by the applicants or appellants if deferrals or continuances are at their request or result from their actions. The added fee shall be payable with the filing of the postponement request. Applicants shall not be liable for any additional fees for a hearing postponement or continuation if directed by the Board.
2. The Board shall require drawings, sketches, plot plans and/or other documentation as the Board shall deem necessary. Such information shall be prepared in a workman-like manner, in order to assist the Board in properly evaluating the case. Eleven (11) copies, one original, and ten (10) duplicates, of the basic documentation submitted with the application, shall be required. Twelve (12) copies shall be required when an applicant is seeking relief within the Conservation Corridor. The additional copy shall be forwarded to the Conservation Commission for their written review. Prior to the hearing, a copy of the deed to the property in question will be required in all

applications for a variance or special exception. All required documents shall become part of the permanent record. When an appeal is made to overturn an administrative decision of an officer of the Town or to appeal a decision of the planning board pursuant to RSA 676:5, required documentation shall include the same number of copies as the original application for which the appeal is being sought.

3. The Board may reject any application not properly completed.
4. The Board shall decide all cases within thirty (30) days of the close of the public hearing, provided all evidence has been submitted to the satisfaction of the Board. All findings of the Board shall be in the form of a motion. The decision shall be made on a form provided by the Board and shall be sent to the applicant and building inspector. The written decision of the Board shall be placed on file and made available for public inspection within 5 business days after the decision is made.

When required by the Board, an applicant, upon receiving a variance or exception with conditions attached shall specify in writing to the Board that said conditions have been met.

5. The following time limits shall apply to appeals to the Board of Adjustment and requests for rehearing:
 - a. Any appeal of an administrative decision taken under RSA 676:5,I, shall be filed with the ZBA within twenty (20) days from the date of the decision and shall specify the alleged error or errors in such order, requirement, decision, or determination. The officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
 - b. Any appeal of a Planning Board decision taken under RSA 676:5, III, shall be filed with the ZBA within thirty (30) days from the date of the Planning Board approval or disapproval of the application and shall specify the alleged error or errors in such order, requirement decision or determination. The Board shall forthwith transmit to the Zoning Board all the papers constituting the record upon which the action appealed from was taken.
 - c. A request to the Board for a rehearing of a decision of the Board shall be filed within thirty (30) days of the date of such decision.
6. Upon filing of a request for a rehearing, the Board shall within thirty (30) days either grant or deny the application for rehearing. In addition, on the Notice of Decision form and all applications as well, it shall be written that an applicant for a rehearing as provided in RSA 677:2 may be taken by any party directly affected thereby. The request for a rehearing must be made to the Office of the Zoning Administrator at 14 Manning St., within thirty (30) days.

The Board shall base its decision upon:

- a. In the case of an appeal from an Administrative order:
 1. Its interpretation of the provision in question.
 2. The applicant meets or does not meet terms of provision.
 - b. In the case of a request for an Exception:
 1. The exception is specified in the ordinance.
 2. All conditions specified in the ordinance are complied with.
 - c. In the case of an application for a use/area Variance:
 1. All State & local laws and regulations must be met.
7. All decisions shall be made at a public meeting and made in the form of a motion. They shall be recorded on a form approved by the Board which shall become a part of the record. The decision shall be based on the record which shall consist of, at a minimum, the application, the building inspector's file and report, if any, and all evidence presented at the public hearing on the application. If the grant of a special exception or variance contains conditions, such conditions shall be stated in the motion.
8. Any information pertaining to a matter and not submitted at the time of the application for review by the Zoning Board of Adjustment must be submitted to the Zoning Board no less than 10 days prior to the ZBA meeting at which the matter will be heard. This rule does not apply to display boards or other demonstrative exhibits intended solely to facilitate the applicant's presentation before the ZBA.
9. The Chair has the power to limit testimony which the Board believes to be redundant, merely cumulative, is primarily a personal attack, or does not address the proposal before the Board.

SECTION V

FORMS –

The Board shall adopt forms. All forms and revisions thereof shall be adopted by motion and shall become a part of these by-laws by vote of the permanent members.

SECTION VI

PUBLIC NOTICE –

Public notice of public hearings on each application shall be placed in a newspaper of general circulation of the area, not less than five (5) days before the date fixed for the hearing of the application, and shall be posted at the Town Hall and at the Building Inspector/Code Enforcement Office at least five (5) days prior to the hearing in compliance with NH-RSA 676:7. Such notice shall include the name of the applicant, description and location of the property (including street address and tax lot number), action desired by the applicant, provision of the Zoning Ordinance concerned, the type of case being made, and the time and place of the hearing.

SECTION VII

CONFLICTING PROVISIONS -

Whenever a regulation contained herein differs from the authority of an existing ordinance or other regulation, the provision which imposes the greatest restriction or higher standard shall be controlling.

SECTION VIII

AMENDMENT –

This policy and procedure may be amended by majority vote of the permanent members provided that such amendment is read at two successive meetings. At the second and final reading, the board shall vote on the amendments.

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The Acting Chairman shall announce:

As this begins a new year for the ZBA, our first order of business shall be the appointment of officers.

The Acting Chair shall call for the first nomination to be made for the first officer position of Chairman.

Order of the vote:

The order of nomination and vote shall be the chairman first, Vice Chairman second and Secretary third. Each position shall have the nomination and vote on the nominee process completed before moving on to the next officer position.

The Nomination and vote process:

The members shall be polled twice. Once for the nomination and a second time to vote for the nominated candidate(s).

The process shall be repeated for each officer position.

Each officer position shall be nominated by the method of polling of all 5 full members. Once the nomination process is completed, only the full members shall vote on the nominated member(s) for that position.

The favored candidate will occur by majority of votes. Not by motions or seconds.

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Revised & Adopted October 4, 1984
Revised & Adopted May 7, 1987
Revised & Adopted May 18, 1989
Revised & Adopted May 6, 1993
Revised & Adopted January 16, 1997 (New Section VIII)
Revised & Adopted March 4, 1999
Revised & Adopted February 1, 2001 (Section IV – 5B)
Revised & Adopted October 4, 2001 (Section III – 4J)
Revised & Adopted July 16, 2009
Revised & Adopted March 15, 2012 (Section IV)
Revised & Adopted August 15, 2013 (Appendix)
Revised & Adopted October 17, 2013 (Administrative Appeals Request)
Revised & Adopted February 19, 2015 (Written Decision 5 Days)