



**TOWN OF BARRINGTON, NEW HAMPSHIRE**

**ZONING BOARD OF ADJUSTMENT  
RULES OF PROCEDURE**

**As AMENDED OCTOBER 19, 2022**

## **PREFACE**

### **History of the Zoning Board of Adjustment Rules of Procedure, Town of Barrington, New Hampshire**

Adopted in 1972, Amended March 14, 1973, Amended May 9, 1973, Amended April 10, 1980, Amended September 10, 1980, Amended May 13, 1981, Amended August 19, 1982, Amended July 15, 1992, Amended August 17, 2022, and October 19, 2022.

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# **RULES OF PROCEDURE**

## **ARTICLE I – AUTHORITY**

These rules of procedure are adopted under the authority of New Hampshire, Revised Statutes Annotated, Chapter 676:1, as amended.

## **ARTICLE II – OFFICERS**

- A. Officers - Generally: Appointments or reappointments of Zoning Board of Adjustment (“Board”) members by the Barrington Board of Select Board (“Select Board”) shall occur during April of each year by a majority vote of the Board. The Board shall meet no later than April 30th for purposes of electing officers from the appointed membership. The Board shall schedule a meeting for this purpose, even if a regular Board meeting is not otherwise scheduled.

Election of officers shall be by a quorum of members. All *regular* members are eligible for election. All officers shall have the right to sit and vote on all Board business and issues, unless otherwise excused or recused from doing so. The term of all officers shall be for one year or until the next annual election takes place, and all officers shall be eligible for reelection.

- B. Chairperson: The chairperson shall be elected by the Board members in attendance at the meeting. If all five regular members are present, they will be the only ones eligible to vote. In the event a regular member is absent, then that member shall be replaced in accordance with other provisions of these Rules. The chairperson 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.

The chairperson shall also be responsible for the submission of prospective Board member names to the Select Board, following the Board's procedure for submitting nominations for appointment (see Article III).

The Select Board have sole authority for the appointment of Board members. The procedure set forth under Article III is not a waiver of the Select Board's authority, nor is it an assumption of authority by the Board. Rather, it is a means for the Board to assist the Select Board in the selection process.

- C. Vice Chairperson: A vice chairperson shall be elected in the same manner as the Chairperson. He or she shall have the full powers and duties of the chairperson on a matter that comes before the Board during the absence of the Chairperson.
- D. Clerk/Town Planner: A Clerk, or Town Planner, is not an officer of the Board, and has no voting rights. The Clerk is responsible for maintaining a record of all meetings, transactions and decisions of the Board, as well as performs such other duties as the Chairperson may direct or as the Board may direct.

### **ARTICLE III – BOARD MEMBERSHIP**

- A. Number of Members: In accord with RSA 673:3, the Select Board shall appoint five (5) regular members and up to five (5) alternate members to the Board. In order to ensure an applicant has a full Board to hear his/her case, it is important for the Board to continuously fill all vacancies promptly.
- B. Regular and Alternate Members: When a regular member vacancy occurs, the Board shall, at its next regularly scheduled meeting, include on its agenda under "New Business" an item to address to the Select Board an appointment to fill the regular member vacancy for the remainder of the term.

Following discussion, the Board shall take a vote on which alternate member(s) shall be recommended by the Chairperson to the Select Board for appointment as a regular member, for the remainder of the departing member's term. The Board may consider and evaluate other persons or non-members for such a vacancy, in addition to alternate members, while giving all candidates consideration of various factors, including seniority, their level of interest, past attendance, participation at meetings, attendance at seminars, and the like.

Upon selection by the Board, the selected member(s) and the Chairperson shall fill out and sign the nomination form and the Chairperson shall immediately forward the form to the Select Board. The Select Board are not bound by such recommendation, as they have exclusive authority to appoint members to the Board. Should the Select Board not approve a nomination, then the Board shall follow the process again until a nomination is approved. The Board may recommend more than one person from which the Select Board may choose to fill the vacancy.

Upon a vacancy occurring in an alternate member position, the Chairperson shall direct the Clerk to give notice of a vacancy existing on the Board for an alternate member. The manner and form of such notice shall be left to the Chairperson's discretion but may include notice being posted at the Barrington Post Office and at the Town Hall.

Any such notice shall direct interested prospective alternate members to submit a letter or email the land use office, [landuse@barrington.nh.gov](mailto:landuse@barrington.nh.gov), of interest to the Board's Chairperson. Upon receipt of a letter of interest, the Chairperson shall contact the prospective candidate and may request him/her to attend the Board's next scheduled regular meeting. In such event, the Clerk shall include an agenda item entitled, "Prospective Alternate Member," on that meeting's Agenda.

Under the agenda's "Prospective Alternate Members" item, the Board may conduct an informal public meeting and discussion with each candidate. Following the discussion, the Board will vote whether to recommend the person for the alternate's position.

- C. Service of Alternates: Alternates are encouraged to attend, be prepared and participate in all meetings and other such Board activities. Non-voting alternates may participate in public hearings during the public portion of the hearing. Upon closure of the public hearing and the board entering deliberations, non-voting alternates shall cease participation.

Whenever the Board is convened and less than five regular members are present, the Chairperson shall designate, in his/her discretion, one or more alternate members to stand in for the absent regular member(s). The alternate shall have full responsibilities and duties of a regular member, including voting on any issue.

In the event a regular member arrives late at a meeting, the alternate standing in for that member will step down, provided significant testimony has not yet been received. Otherwise, the alternate will continue to sit for that member.

In selecting which alternate to designate, the Chairperson should consider a number of factors, including the available alternates' frequency of substitution, attendance, and the like. The Chairperson's goal shall be to ensure that all alternates are given an overall equal opportunity to substitute for regular members.

#### **ARTICLE IV – MEETINGS**

- A. Public Hearing Meetings: Public hearings will generally be held at the Town Hall, at 7:00p.m. on the third Wednesday of each month. If the third Wednesday of the month falls on a holiday or if the Town Hall is unavailable to hold the public hearing on the third Wednesday, the public hearing will be scheduled to occur at a date, time and place as determined by the Chairperson, after consultation with the Town Planner.

Public hearings will be scheduled only when there is business to conduct.

If a public hearing is scheduled and subsequently cancelled, a notice of cancellation shall be posted at Town Hall, the Barrington Post Office, and, if practical, on the Town's website and elsewhere as determined by the Chairperson.

- B. Other meetings: The Chairperson may call other meetings, at such times and places as needed.

- C. Required Notice for “Public Hearing” Meetings: All public hearings shall be noticed in the following manner:
1. Notice shall be posted in the Town Hall, Library, Barrington post office, and on the Town’s website not less than 5 days prior to the hearing.
  2. The Clerk shall attempt to contact all members and alternates to remind them of a scheduled meeting, within 72 hours of such meeting.
  3. The appellant and every abutter and holder of conservation, preservation, or agricultural preservation restrictions shall be notified of the hearing by certified mail not less than 5 days before the date fixed for the hearing of the appeal.
- D. Required Notice for Other Meetings: All other meetings, during which no public hearing on an application is being heard, shall comply with the notice requirements under RSA 91-A:2, II.
- E. Quorum: A quorum for all meetings of the Board shall be three members, including alternates sitting in place of regular members. RSA 674:33 III, provides “the concurring vote of three members shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal” For this reason, the Board will make every effort to ensure that a full five-member Board is present for the consideration of any action, application or appeal.
- In event that the Board has in attendance less than five regular and/or alternate members, but has at least three to constitute a quorum, the Chairperson shall request of the applicant (on the record) whether or not the applicant desires to proceed with less than five members after being advised that at least three members must concur in the decision on his/her application. If the applicant does not desire to proceed, the application shall be continued, and the Board shall immediately (at that meeting) schedule a meeting to be held within reasonable time for purposes of hearing the application with five members present.
- F. Disqualifications. If any member finds it necessary to disqualify or recuse his or herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the Chairperson as soon as possible so that an alternate may be requested to sit in his/her place. The disqualifications shall be announced by either the Chairperson or the member his/herself before the beginning of the public hearing on the case. The member disqualifying him/herself shall then immediately remove him/herself from the Board table during the public hearing on and during all aspects of and deliberation on the case. Any uncertainty as to recusal or the need for disqualification shall be met with a review of RSA 673:14 by the Board, and if uncertainty exists, RSA 673:14 (II) shall be followed.
- G. Electronic Participation by Members. Members may participate in meetings and hearings electronically when attendance in person is not reasonably practical. The reason for electronic participation shall be stated in the minutes of the meeting. A quorum of the board shall be physically present at the meeting location. Each part of the meeting shall be audible or otherwise discernable to the public at the physical location and each member participating electronically must be able to simultaneously hear each other and speak to each other during the meeting and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating.

H. Order of Business: The order of business for regular meetings shall be as follows:

1. Call to Order by Chairperson
2. Pledge of Allegiance
3. Roll call by the Chairperson
4. Public hearing(s)
5. Minutes of previous meeting
6. Unfinished business
7. New business
8. Other business that may properly come before the Board
9. Adjournment

I. Public Hearings on Applications of Appeal to Board: The following shall be the procedure for hearing applications of appeal to the Board. After calling the application for hearing, the following steps shall be followed:

Step 1: The Chairperson (or Town Planner, if any) shall address each item on the checklist to ensure the application is properly presented before the Board. If the checklist is not complete, the Board may continue the hearing until the checklist is completed or may proceed with the hearing to determine which checklist items are missing.

The Checklist should include, at a minimum, the following items:

- \_\_\_\_\_ Proper notice to abutters
- \_\_\_\_\_ Fees have been paid
- \_\_\_\_\_ Easements (if applicable) on application (yes or no)
- \_\_\_\_\_ Proper notice to holders of easements or conservation easements, if any
- \_\_\_\_\_ All matters of substance addressed (if not, Board may continue hearing)
- \_\_\_\_\_ All matters of form addressed and corrected
- \_\_\_\_\_ Proper signatures exist on application
- \_\_\_\_\_ Owner's signature affixed together with applicant's signature (unless same person)
- \_\_\_\_\_ Proper Zone of property exists on application
- \_\_\_\_\_ Proper type of application submitted (Board may allow amendments and proceed, based upon Board's discussion and resolution)
- \_\_\_\_\_ All overlay zone issues addressed in application
- \_\_\_\_\_ All necessary plans, drawings present to allow full understanding of application
- \_\_\_\_\_ Special information included that is required by ordinance or statute (i.e., sign regulations)
- \_\_\_\_\_ Application is complete enough to proceed

Step 2: The Chairperson shall summarize for the public the key points of the application, which may include the zoning district(s), street address, applicant's name, relief sought, et cetera.



Step 3: The Chairperson shall ask the applicant or the agent to present the appeal. Each person who appears is required to state his/her name and why he/she is interested in the case.

Step 4: The Chairperson shall ask if any board member has any question for the applicant.

Step 5: The Chairperson shall ask if any member of the public wishes to speak for or against the application. Each person who appears is required to state his/her name and why he/she is interested in the case.

Normally, those wishing to speak in favor are given the first opportunity and those in opposition shall follow.

Questions by members of the public for the applicant must go through the Chairperson.

Members of the Board may ask questions at any point during the testimony and of any person, subject to the Chairperson's direction.

Any member of the board, through the Chair, may request any party to the case to speak a second time.

Step 6: The Chair shall close the public hearing, following which the Board shall deliberate. No further testimony is taken at this time, subject to Chairperson allowing same only or allowing Board members to ask additional questions of the applicant under exceptional circumstances.

Step 7: The Chairperson shall call for a vote of the Board following a reasonable period of time for deliberations.

- J. Site Walk Necessary: Whenever a majority of board members believe it would be helpful, a site walk of the subject property shall be scheduled. The site walk shall be conducted at such other time as the Board shall agree. The time, date and place of the site walk shall be given as part of the public notice for the application, appeal or action. Board members intending to sit on the Board during the determination of a particular case are strongly encouraged to attend the site walk.

During the site walk, the applicant shall identify key aspects of the property that the applicant deems important for consideration by the Board. The site walk is not the appropriate venue for taking testimony, and the Chairperson should restrict any attempts by persons to testify during the site walk. The Chairperson should direct all such persons to attend the public hearing to offer testimony at the appropriate time.

- K. Continuations of Public Hearings: A public hearing may be continued for any of the following reasons:

1. Upon written request of the applicant (if prior to a hearing) or upon oral request at

the time of the hearing.

2. Upon reaching 9:30 p.m. all cases may be discussed and decided on the following Thursday at 7:00 pm.
  3. Upon the membership falling below 5 members.
  4. Upon the Board resolving that additional information or evidence is necessary, or for any other good cause.
- L. Fees upon continuance: The Board will not levy fees for additional notice if, during the hearing, the matter is continued to a specific date and time.
- M. Membership upon continuation of a hearing: In event that a hearing is continued, all members and alternates shall use their best efforts to be present at the subsequent hearing. If a different member or alternate must sit in a subsequent hearing, then such different member or alternate shall review the file, all minutes taken to date, and view the subject site (if needed).
- N. Alternate's status upon continuation of hearing: In event that an alternate sits on a case and the case is continued, the alternate shall sit on all subsequent proceedings until final decision is rendered on that case, even if a regular member becomes available, unless the alternate member must step down for other reasons.

## **ARTICLE V – APPLICATIONS OF APPEAL**

- A. Types: The types of applications of appeal are governed by statute and are of four primary types: variance (VAR), special exception (SE), equitable waiver of dimensional requirement (EW DR) and appeal of administrative decision (AAD). The Board has adopted application forms, including instructions for each application, which applicants must fully complete.
- B. Amendments to Applications: The Board, in its discretion, may vote to waive any procedure as set forth in the above-referenced instructions, and may vote to allow amendments to applications in certain circumstances when a correction is needed or deficiency noted in the application, at the time of hearing. As to the complexion and content of a particular application, "matters of form" may be amended at the time of hearing, without a vote of the Board, while substantive deficiencies in an application can only be allowed by Board vote. Should a substantive deficiency not be allowed amendment at the time of the hearing, then the hearing shall be continued to the next scheduled regular meeting, or a regular meeting will be scheduled within reasonable time.
- C. Initial Review of Applications Upon Receipt: When an application of appeal is received by the Town, Clerk, or the Town Planner, if any, shall review the application within five (5) business days following receipt to ensure the following: (Note: All items on the above-referenced Checklist should also be reviewed by the Chairperson, in addition to the following)
1. The application is completed fully, and all required information is set forth on the application by the applicant, using the approved application forms.

2. The application cites the specific ordinance or administrative decision under appeal and has appended a copy of the relevant decision letter, notice or other document to the application.
3. The application has appended to it all material documents.
4. The correct fees have been paid and received by the Town. No application shall be heard until such time that all fees have been paid.

Should an application be deemed by the Town Planner to be incomplete, he/she shall immediately contact the applicant by telephone (and in event the applicant cannot be reached by phone, by mail, that day), and give notice of the deficiency(ies).

Unless the applicant requests withdrawal of his/her application, the fees which were paid are not returned with the application, but shall be held on deposit, pending receipt of the fully completed application.

- D. Acceptance of an Application: Once the application is deemed complete, the Clerk or Town Planner shall schedule a public hearing to occur within thirty (30) days of the *receipt* of the application.

Upon receipt of any application, the zoning board of adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If the zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.

- E. Transfer of copies by Clerk to Members: The Clerk shall make copies of the application and send copies to each member and to the Town Planner.

- F. Refund/Waiver of Fees: A refund or waiver of fees shall be provided only in accord with this section.

1. If the application is withdrawn within ten (10) days of submission, and the Board has incurred no costs for certified mail or newspaper notice, then all fees with the exception of the \$150.00 Application Fee shall be refunded.
2. If the application is withdrawn after ten (10) days of submission, and the Board has incurred no costs for certified mail or newspaper notice, then all fees with the exception of the \$150.00 Application Fee shall be refunded.
3. If any certified mail notices for a public hearing have been mailed, no refund of the "Certified Mail" fees under Article IX, A, 3 shall issue.

- G. Minutes: The Clerk shall be responsible for the taking and production of minutes, in accord with RSA Chapter 91-A.

All public meetings shall be electronically recorded to allow for the production of minutes following the meeting. The electronic recording may be destroyed by the Clerk anytime following the approval of the minutes by the Board, provided however, in the

event an applicant or other person desires a copy of the electronic recording and agrees to pay for such copy or otherwise desires to have the electronic recording saved, such request shall be made in writing (preferably by certified mail) to the Clerk so that such notice is received prior to the scheduled vote on the approval of the subject minutes. Such perfected requests shall be honored, and the electronic recording saved, copied or disseminated pursuant to the requestor's requests.

Additionally, the Clerk will complete the written production of the minutes within 5 business days following the meeting and will be available at the Land Use Department located at Town Hall.

- H. Decisions of the Board on Applications of Appeal: Upon the decision of the Board on any application of appeal, the following procedure shall take place:

1. The Chairperson will orally convey the decision to the applicant at hearing and notify the applicant that he/she or any party, or any other person directly affected by the decision may request a rehearing pursuant to RSA 677:2, within 30 days following hearing.
2. Within 5 business days of the Public Hearing, the written decision shall be mailed to the applicant, the Code Enforcement Officer, all interested parties, which may include the Town Administrator, the Planning Board Chairperson and Town Counsel.
3. 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. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. 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.
4. The written decision shall be placed on file in the board's office and shall be made available for public inspection at the Town Hall within 144 hours following the vote.

- I. Waiver of Procedures: The Board may waive any Rule of Procedure provided such waiver does not run contrary to the law and where a waiver is reasonable and justified by the circumstances.

- J. Expeditious Decisions. The Board shall decide cases as expeditiously as is both reasonable and practicable, given both the statutory requirements and the needs of the parties, including the Town, for continuances, other evidence gathering, et cetera. Unless waived

by the applicant, the Board shall hear and decide all cases within 90 days of receipt of the application.

- K. Additional Requirements Related to Applications of Appeal: Pursuant to RSA 676:5, appeals of administrative decisions shall be brought to the Board within "reasonable time." For purposes of this particular rule, "reasonable time" shall be thirty (30) days. The timeframe under this rule shall run from the date of issuance of the disputed administrative decision. A copy of the application for appeal shall be transmitted by the Clerk to the administrative officer, board or department that issued the decision from which the administrative appeal is taken.

## **ARTICLE VI – NOTICE TO NEIGHBORING COMMUNITIES**

Should the Town Planner, upon his or her initial review of an application, or the Board, upon hearing an application, decide that any application has either a direct or indirect effect or impact on a neighboring town (that impact being statutorily defined or otherwise) such town shall be provided notice of the application and hearing to its town clerk by certified mail, at the applicant's expense. In the event the need for such additional town notice is initially discovered during a public hearing, the Board shall continue the hearing to a later date to allow such notice to be sent to the subject town.

## **ARTICLE VII – JOINT MEETINGS AND HEARINGS**

- A. An applicant seeking a local permit may request two or more land use boards, including the ZBA, to hold a joint hearing when the subject matter of the requested permit is within the responsibilities of those land use boards. See RSA 676:2. In addition, the Board may, on its own initiative, request a joint hearing.
- B. In event of a petition by an applicant for a joint hearing:
1. The Board Chairperson shall call a meeting at the earliest possible time, with notice in accord with Article IV.D., to discuss and determine whether or not the Board desires to have a joint meeting.
  2. If the Board approves holding a joint hearing, such hearing shall be confirmed by the other board's Chairperson as having been approved by that board, and a joint hearing shall be immediately scheduled.
  3. Notice of such joint hearing shall be given by way of the usual notice procedures, as described more particularly above in Article IV, with the Town Planner responsible for such postings and notices, unless the boards involved in the hearing otherwise agree.
  4. In event the Planning Board participates in the joint hearing, its chairperson shall chair the joint hearing. If the Planning Board is not included, then the boards involved shall determine which board's chairperson shall chair the hearing.

**Procedures as set forth above, as well as those of the other board(s) that are not**

**inconsistent with the procedures set forth above, shall be followed in any such joint hearing.** **ARTICLE VIII – MEMBER’S PARTICIPATION IN TRAINING**

There are several seminars and conferences available to members where training seminars are given. Members and alternates are encouraged to attend one training seminar during the course of each year. Members and alternates are reminded that their re-appointment takes into account seminar attendance, among other factors.

Any member of a zoning board of adjustment or planning board may complete training offered by the office of planning and development or another organization that provides similar training covering the processes, procedures, regulations, and statutes related to the board on which the member serves. The office of planning and development shall develop standard self-training materials and corresponding tests for zoning boards of adjustment and planning boards which shall be provided to members free of charge. The office of planning and development may provide other types of training, which may be designed in a variety of formats including, but not limited to, web-based, distance learning, or traditional classroom style. For purposes of this section, the term "member" includes regular and alternate members of zoning boards of adjustment and planning boards.

Should a member, alternate or regular, attend a seminar and incur an admission fee or mileage fee, the member may submit proof of payment to the Chairperson who shall ask for reimbursement from the Land Use Office.

**ARTICLE IX – FEES**

- A. The fees and payable for each application are as follows:
  - 1. Application Fee: \$150.00 per variance request
  - 2. Public Notice Fee: \$250.00, to include the cost of newspaper notice, and any recording fee for the decision.
  - 3. Certified Mail Fee: \$8.00, to be sent to each applicant, each agent for the applicant, each attorney for the applicant, each abutter, and each interested party entitled to notice under New Hampshire Law.
- B. The applicant shall pay for all additional fees for public notice and certified mail resulting from the following, except as provided in sections D and E below:
  - 1. A rehearing being granted on an application, regardless of who requests the rehearing, and/or
  - 2. Any other hearing on the application which requires additional public notice because of an appeal to the superior court or any other intervening litigation, or for any other reason.
- C. Failure of the applicant to pay for all additional fees for public notice and certified mail required by section B above shall result in the Board taking whatever action, including but not limited to revocation of the approval, as it deems just and reasonable under the circumstances.
- D. If the need for additional notice under section B above is due entirely to the fault of the

Board, the Board shall pay for the additional notice.

- E. If the Select Board is seeking the rehearing or is otherwise primarily responsible for the requirement for additional fees for public notice or otherwise, then the town, and not the applicant, shall pay for all such notice fees.

#### **ARTICLE X – PROCEDURE FOR TOWN COUNSEL OPINIONS**

Should a question arise at hearing related to any issue, including any issue related to a pending application, the Board may vote to continue the meeting to consult with Town Counsel or request an opinion from Town Counsel before continuing taking evidence or deliberating. In such event, the Board shall continue the matter for reasonable time to allow for receipt of the legal opinion.

All communication with Town Counsel shall be made through the Town Planner, unless Town Counsel is present at a particular public hearing or is present at a closed meeting for purposes of attorney client communication. Upon receipt of an opinion, the Town Planner and/or Clerk shall make copies of the opinion and present at the ZBA Board meeting for the board members to review, and Town Planner and/or Clerk collect at the meeting end.

#### **ARTICLE XI – ADOPTION/AMENDMENT**

- A. These Rules shall be re-adopted or amended at a regular meeting of the Board and shall be placed on file with the town clerk for public inspection.
- B. This version of the Rules was adopted on October 19, 2022.