

Zoning Board of Adjustment Town of Sandwich, NH

Rules of Procedure

Amended 12/09/10; 09/12/13; 06/12/14;
7/8/21; 12/8/22; 5/11/23

Statement of Mission and Purpose

The Zoning Board of Adjustment exists to hear appeals of administrative decisions, requests for special exceptions, appeals from interpretations of the building code, appeals from decisions of the Historic District Commission and requests to grant variances and equitable waivers, where warranted, that pertain to the Zoning Ordinance adopted by the Town of Sandwich in 1969 and amended from time to time since then.

Appellants appearing before the Board shall be treated with dignity and respect and to have their case adjudicated in a timely and fair manner consistent with the laws of the State of New Hampshire.

The Board will hear with interest evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance and state zoning laws.

Authority

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

Officers

1 - **A Chair** shall be elected annually by a majority vote of the Board at the first regular meeting of the Board after the Annual Town Meeting in March *or at other times as necessary*. 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.

2 - **A vice-Chair** shall be elected annually by a majority vote of the Board at the first regular meeting of the Board after the Annual Town Meeting in March *or at other times as necessary*. The vice-Chair shall preside on matters that come before the Board in the absence of the Chair.

3 - **A clerk** may be elected annually by a majority vote of the Board at the first regular meeting of the Board after the Annual Town Meeting in March *or at other times as*

necessary. The clerk 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.

4 - All officers shall serve for one year and shall be eligible for re-election.

Members and Alternates

1 - Five (5) regular members shall be appointed by the Board of Selectmen. Regular members shall serve staggered three (3) year terms and shall be eligible for reappointment.

2 - Up to five (5) alternate members shall be appointed by the Board of Selectmen. Alternate members shall serve staggered three (3) year terms and should attend all meetings to familiarize themselves with the workings of the Board and to stand ready to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities. Alternates are allowed to sit with the Board, ask questions and participate in Deliberations pursuant to RSA 676:1, but may not make motions or cast votes unless first designated as a voting member.

3 - Members must reside in the Town of Sandwich and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chair as soon as possible. Designated voting members, including the Chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration. All members may deliberate and vote on Board business other than appeals.

4 - In the event of chronic absence by an appointed member of the Board, or for any other just cause, a majority of members of the Board may recommend to the Selectmen that a member be removed from the Board.

Staff

The Board may designate a Secretary/Assistant whose duties may include: minutes, notices of decision, review of applications, notice to public and abutters, preparation of board information packet.

Meetings

1 - Regular meetings shall be held, if needed, at the Sandwich Town Hall at 6:00 PM on the second Thursday of each month. Other meetings 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](#).

2 - Quorum. 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 there are fewer than five members (including alternates) present, the Chair shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with fewer than five members present, that shall not constitute grounds for a rehearing should the application fail.

If the applicant opts to postpone due to fewer than a full board present, the board shall announce the time, date, and location of the continued hearing. If the board cannot determine the time, date, and location of the continued hearing, the board shall provide new notice to all parties pursuant to [RSA 676:7](#).

If any regular Board member is absent from any meeting or hearing or disqualifies him/herself from sitting on a particular case, the Chair shall designate one of the alternate 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.

3 - Disqualification. If any member finds it necessary to disqualify him/herself from sitting in a particular case, as provided in [RSA 673:14](#), they shall notify the Chair as soon as possible so that an alternate may be requested to sit in his/her 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 begins. The vote shall be advisory and non-binding. Ultimately, each Board member has the obligation to recuse or disqualify him/herself as the Board member deems appropriate.

Either the Chair or the member disqualifying him/herself before the beginning of the public hearing of the case shall announce the disqualification. The disqualified member shall absent him/herself from the Board table during the public hearing and during all deliberation on the case.

- 4 - Order of Business
- a. Call to order by the Chair
 - b. Approval of minutes of the previous meeting
 - c. Continued applications
 - d. New applications
 - e. Board business
 - f. Communications and miscellaneous
 - g. Other business
 - h. Adjournment

Applications and Decisions

1- Appeals of an Administrative Decision pursuant to [RSA 676:5](#) shall be filed within 30 calendar days or within 30 days of when such an administrative decision becomes known or reasonably could have been known by the petitioner as determined by the Board based on evidence presented. Reason for accepting an appeal shall be recorded in the minutes.

2 - Applications

a. Each application for a hearing pursuant to [RSA 674:33](#) and [674:33a](#) submitted to the Board shall be made on forms provided by the Board and shall be presented to the Board or its designee, who shall record the date of receipt over their signature.

The ZBA shall post a notice and hold a public hearing within forty-five (45) calendar days of receipt of an application for an appeal as outlined in [RSA 676:7](#).

At each meeting, the Chair shall present to the Board all applications received from the Board or its designee. In order to be considered for a hearing before the Zoning Board of Adjustment, a completed application must be filed with the Board or its designee at least twenty-four (24) days before the next scheduled meeting of the ZBA. The Board members shall be mailed and/or electronically emailed copies of the applications to be heard at least seven (7) days before the next scheduled meeting of the ZBA.

b. The applicant shall provide an original and eleven (11) complete copies of the application along with eleven (11) 11 x 17 inch or 8.5 x 11-inch plans. If a full-size plan is required for the application, three (3) full size plans shall be provided along with the application.

c. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.

d. Any materials and written submissions are requested to be submitted at least 14 days prior to the Appeal.

3 - Public Notice

a. Public notice of public hearings on each application shall be given in a newspaper of general circulation and two public places not less than ten (10) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of the property to include the 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.

b. Personal notice shall be made by verified [\[RSA 21:53\]](#) mail to the applicant and all abutters not less than ten (10) days before the date of the hearing. Notice shall also be sent to any holders of conservation, preservation, or agricultural easements on the subject

property and any professional whose license stamp is on a submitted plan. 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 and shall be made on forms provided for this purpose.

c. The applicant shall pay for all required notices costs in advance.

4 - Public Hearing

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

a. The Chair shall call the hearing in session.

b. The Chair shall read the application or appeal or may, if the application is lengthy, choose to present a summary of the issues presented to the Board.

c. Members of the Board may ask questions at any point during the testimony.

d. Each person who appears before the Board shall be required to state his/her name and address and indicate whether he/she is a party to the case or an agent or counsel of the party in the case.

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

f. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.

g. The applicant shall be called to present his/her application or appeal.

h. Those appearing in favor of the application or appeal shall be allowed to speak.

i. Those in opposition to the application or appeal shall be allowed to speak.

j. The applicant and those in favor shall be allowed to speak in rebuttal.

k. Those in opposition to the application or appeal shall be allowed to speak in rebuttal.

l. Any person who requests the Board to compel the attendance of a witness, pursuant to [RSA 673:15](#), shall present his/her request in writing to the Chair not less than seven (7) days prior to the public hearing.

m. The Chair shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.

n. The hearing on the application or appeal shall be declared closed by the Chair and Board deliberation will proceed or be deferred to another time to be announced. Once the public hearing is closed, there shall be no further public input unless the Chair makes an announcement that the Board reserves the right to ask further questions or hear clarifications from the applicant or public at that meeting only.

5 - Decisions.

The Board shall decide all cases within thirty (30) days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. Notice of the decision will be made available for public inspection within five (5) business days, as required by [RSA 676:3](#). 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. Notice shall be mailed to the applicant.

[RSA 674:33 VIII. Upon receipt of any application for action pursuant to this section, 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 a 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.]

After the public hearing, the Chair may assign the task of drafting a motion to a Board member or to the Board's counsel. Board members may not discuss those proposed decisions outside of a properly noticed meeting. It must be made very clear to all Board members that the decision is the Board's, not the person who drafted the decision, and that members can and should edit the proposed decision as necessary to reflect their decision.

Voting method shall be that each of the criteria is discussed with rationale for decision and then by roll call, vote to grant, grant with conditions, or deny application.

Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.

Any person directly affected may request a rehearing of a Board decision within thirty (30) calendar days beginning with the date following the vote of that decision pursuant to [RSA 677:2](#).

Pursuant to [RSA 674:33 I-a](#) and [674:33 IV](#), Variances and Special Exceptions approved by the Board shall be valid if exercised within two (2) years of the date of final approval.

Records

- 1 - The records of the Board shall be kept by the clerk and made available for public inspection at the Sandwich Town Hall in accordance with [RSA 673:17](#).
- 2 - 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](#).
- 3 - Minutes of all meetings including names of Board members, persons appearing before the Board and a brief description of the subject matter and final decisions shall be open to public inspection within five (5) business days of the public meeting in accordance with [RSA 91-A:2 II](#).

Amendments

These rules of procedure may be amended by a majority vote of the members of the Board at any regularly scheduled Zoning Board meeting.

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 and waiver would not be contrary to the spirit and intent of the rules or specific circumstances or conditions of the land indicate that the waiver will properly carry out the spirit and intent of the rules. The basis for any waiver granted shall be recorded in the minutes of the board.

Joint Meetings and Hearings

- 1 - [RSA 676:2](#) provides that the Board of Adjustment may hold joint meetings or hearings with other "land use boards" including the Planning Board and the Historic District Commission and that each Board shall have the discretion as to whether or not to hold a joint meeting with any other land use Board.
- 2 - Joint business meetings with any other land use Board may be held at any time when called jointly by the Chairs of the two Boards.
- 3 - A public hearing on any appeal to the Board of Adjustment will be held jointly *only* under the following conditions:

a. The joint public hearing must be a formal public hearing on appeals to both Boards regarding the same subject matter; and

b. 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

c. 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

d. The other Board shall concur on these conditions.

e. After the joint hearing is concluded the ZBA will meet separately from the other Board(s) to deliberate and make a decision.

Amendment History:

09/12/13: Minor RSA reference corrections; clarification relative to regular & alternate member voting rules; Order of Business list changed to reflect customary procedures; references to appeal deadlines and decision notices corrected to reflect statutory language; requested submission deadline for supplementary documents; addition of time limit relative to approved variances and special exceptions

06/12/14: Added a Staff position description; amended waiver language to reflect statutory language.

July 8, 2021: Revisions were reviewed by the ZBA and by Town counsel. Mrs. Katherine Thorndike moved the revised Rules of Procedure to be approved. Mr. Tim Miner seconded. The motion passed unanimously.

August-November 2022: Rules reviewed: to reflect legislative changes in timeline and content of decision notices; to revise notification timelines and to clarify public hearing process.

May 11, 2023: In applications and Decisions, #1 was amended to reflect Town vote to return deadline to ZBA Rules from ZO; #5 was amended to add revised RSA language on the written findings of fact requirement. The meeting time was revised from 7 to 6 pm.