



COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment

Rules of Procedure

1. AUTHORITY

- 1.1.** These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, with Supplements, and the Zoning Ordinance and Land Use Regulations of the Town of Windham, NH as amended from time to time.

2. OFFICERS

- 2.1.** The Board shall consist of five (5) elected members (chosen at Town of Windham's Election) and up to five (5) alternates appointed by the elected members of the Zoning Board.
- 2.2.** A Chair shall be elected annually in the month of March following the Town of Windham's Election. Said Chair shall serve for one year and shall be eligible for re-election. He/she shall preside over meetings and hearings, appoint such committees as directed by the Board, represent the Board for all official business, and shall affix his/her signature in the name of the Board. The ZBA Staff Administrator may sign for the Chair at the direction of the Chair.
- 2.3.** A Vice Chair shall be elected annually in the month of March following the Town of Windham's election. Said Vice Chair shall serve for one year and shall be eligible for re-election. In the absence of the Chair, he/she shall preside over meetings and hearings and represent the Board for all official business, and shall have the full powers of the Chair in matters that come before the Board during the absence of the Chair.
- 2.4.** A Board Secretary shall be elected annually in the month of March following the Town of Windham's election. Said Board Secretary shall serve for one year and shall be eligible for re-election. The Board Secretary shall be responsible for maintaining a record of all meetings, transactions, and findings of the Board, in absence of the ZBA Staff Administrator, and shall perform such other duties as the Board may direct.

3. MEETINGS

- 3.1.** Meetings of the Board shall be held in the Community Development Department, conference room, or other designated location, at 7:00 PM on the 2nd and 4th Tuesdays of each month and at other times upon the call of the Chair, provided however that the Board will not meet on Federal, State or local election days. The Chair may administer oaths and compel the attendance of witnesses in accordance with RSA 673:15. All meetings of the Board shall be open to the public unless a non-public session is required. The Board Secretary or ZBA Staff Administrator shall keep

minutes of the proceedings, showing the vote, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep the records of the examinations and other official actions, all of which shall be filed in the Community Development Department and shall be a public record. All public records shall be available for public inspection within 5 business days.

- 3.2.** A Quorum shall consist of three members, if a member disqualified himself/herself or cannot act in a particular case he/she shall notify the Chair who shall designate an alternate who shall have all the powers and duties of a regular member in regard to the appeal or appeals under consideration on which the regular member is unable to act.
- 3.3.** The deliberative session will be held after each case unless the Board, by vote, changes the order of business as needed. The order of business for regular meetings shall be as follows:
 - 3.3.1.** Roll call by the Chair.
 - 3.3.2.** Hearing of appeals and their deliberative sessions.
 - 3.3.3.** Requests for reconsideration/re-hearing (Deliberative Session).
 - 3.3.4.** Minutes.
 - 3.3.5.** Other Business.
 - 3.3.6.** Adjourn.
- 3.4.** The following rules shall govern the hearing of cases before the Board.
 - 3.4.1.** The Board Secretary shall read applications in sequence of the agenda and report on the manner in which public notice and personal notice were given.
 - 3.4.2.** The Chair, with consent of the Board, may change or request a change in sequence from the Board.
 - 3.4.3.** The Chair shall recognize the applicant or his/her designated representative to present his/her appeal.
 - 3.4.4.** Those appearing in favor of the appeal shall have the opportunity to speak.
 - 3.4.5.** Those in opposition shall have the opportunity to speak.
 - 3.4.6.** Those with general comments or questions shall have the opportunity to speak.
 - 3.4.7.** The applicant shall have the opportunity to speak in rebuttal.
 - 3.4.8.** Those in favor or in opposition, or with general comments shall have the opportunity to speak in rebuttal, limited to only new information presented by the applicant during rebuttal.
 - 3.4.9.** Any persons who wish to speak for a second time may do so at the discretion of the Chair after those wishing to speak for the first time have done so.
 - 3.4.10.** The Chair may limit the length of time for testimony in a manner the Board deems appropriate.

- 3.4.11.** All public testimony ends once the Chair closes the public portion of the case to enter deliberative session or once the Board votes to enter deliberate session.
 - 3.4.12.** The plan pertaining to the board's decision, additional documentation deemed necessary to support that plan and all documents submitted for the Board's consideration as exhibits shall be dated and initialed by the Chair and kept as part of the record.
 - 3.4.13.** If the Board determines additional information or time is required to reach its decision, it may vote to continue to a date certain.
- 3.5.** A Meeting Agenda is publicly posted for all meetings as required by law. At least 48 hours prior to the Meeting Agenda being posted for the public, it shall be emailed to the Chair of the Board or Chair's designee(s) for review. The Chair or designee(s) will make every reasonable attempt to respond. If no response is received from the reviewer(s) within that period, the original Meeting Agenda shall be posted to meet any legal timing requirements.
- 3.6.** The following procedures shall be used when voting on an application before the Board:
 - 3.6.1.** In the case of a Variance Application, if a Board member determines the application meets all statutory variance criteria, the member shall vote in the positive. Board members shall not vote on each variance criteria separately.
 - 3.6.2.** In the case of any other application, a Board member shall vote in the positive if the member determines that the applicant has demonstrated that the request should be granted.
 - 3.6.3.** A concurring vote of 3 members of the board shall be necessary to take any action on any matter that the Board is required to pass as required by law (RSA 674:33(III)).
 - 3.6.4.** If an application is denied, those members voting in the negative on the application shall indicate why or in what fashion the application failed to meet the applicable criteria for approval, such that a written Notice of Decision may be provided as required by law (RSA 676:3(1)).
- 3.7.** The Board shall not open a public hearing on a business item after 10:00 P.M., absent a waiver voted under Section 16.4 of these Rules.

4. BOARD INITIATED MEETING CHANGES

- 4.1.** The Chair, or Vice Chair if the Chair is unavailable, shall approve any change of location or cancellation of a meeting. If such a change is approved, the Community Development Department shall make every effort to alert the public as early as possible via a public posting and, if possible, the Town of Windham official website.

4.2. JOINT MEETINGS AND HEARINGS

- 4.2.1.** The Zoning Board of Adjustment may hold joint meetings and hearings with other land use Boards. Each Board shall have discretion whether or not to hold such joint meetings and hearings.

- 4.2.2.** Joint meetings and hearings with another local land use Board may be held at any time when called jointly by the Chair of the two Boards.
- 4.2.3.** Each Board involved in joint public meetings and hearings makes its own decision in the manner of how it normally conducts its business, based on its criteria for the particular matter.

5. GENERAL RULES

- 5.1.** Each person who appears shall be required to state his/her name and address and indicate whether he/she is an abutter, a party to the case or an agent or counsel of a party to the case.
- 5.2.** Any party who desires to ask a question of another party must do so through the Chair.
- 5.3.** Members of the Board may ask questions at any point during testimony.
- 5.4.** Any member of the Board through the Chair may request any party to the case to reappear.
- 5.5.** Any person who desires to compel the attendance of a witness shall present his/her request in writing, to the Chair, no later than three (3) days prior to the meeting and the Town shall not incur any costs associated.
- 5.6.** The following are the duties of an alternate:
 - 5.6.1.** When an alternate is assigned to a case, he/she has all the duties of a regular member.
 - 5.6.2.** Non-assigned alternate members of the Board may participate in the hearing of appeals, but shall not participate in the deliberative session, which shall be limited to regular members and designated alternates.
- 5.7.** Recordings of the meeting are for secretarial purposes only and recordings may be reused after the minutes of the meeting have been approved.
- 5.8.** All inquiries to the ZBA appointed Attorney shall come through the Chair (or Vice Chair in his/her absence) after review and approval by the Board. Understanding that procedural questions may occur in the period between meetings, the Chair may initiate an inquiry to the Attorney to expedite proceedings. All correspondence with the Attorney shall be available to Board members.
- 5.9.** If official representation of the ZBA is required in a legal proceeding by the Attorney representing the Town or Board, the Chair (or Vice Chair acting on behalf of the Chair), shall determine which Board member shall attend such proceeding. If individual members are required by the Attorney to appear at a legal proceeding, the Attorney shall submit such request to the Board in writing.

6. APPLICATION - WITHDRAWAL

- 6.1.** Applicants who wish to withdraw their applications shall file a written request with the Community Development Department before the hearing notice for the scheduled hearing is released to the abutters or general public. Applications withdrawn in this fashion shall be granted by the Community Development Department.

6.2. Application withdrawal requests received after the hearing notice for the scheduled hearing is released to the abutters or general public shall be considered by the Board at the scheduled hearing. As a courtesy to the public, application withdrawal requests may be indicated on the agenda as “The applicant has requested to withdraw this application, which the Board shall consider.”

7. APPLICATION - REQUEST TO RESCHEDULE

7.1. Applicants who wish to reschedule their applications for a later hearing shall file a written request with the Community Development Department before the hearing notice for the scheduled hearing is released to the abutters or general public. Requests to reschedule made in this fashion shall be granted by the Community Development Department.

7.2. A request to reschedule made by the applicant after the hearing notice for the scheduled hearing is released to the general public or abutters shall be deemed a request for a continuance and considered by the Board at the scheduled hearing. As a courtesy to the public, requests to reschedule may be indicated on the agenda as “The applicant has requested to reschedule this hearing, which the Board shall consider.” The case shall be read into the record (opened) at the scheduled hearing by the Board Secretary and public input regarding the change of date may be allowed by the Chair at this time. The Board shall first decide whether to accept the request for continuance by majority vote and then, based on that result, shall make a determination as to the final action to take on the case. A majority vote of the Board shall be required for any action taken on the case. Although continuation requests that are granted by the Board and rescheduled to a date certain do not require newspaper or abutter re-notification, these cases shall be issued to the newspaper as a courtesy to the public.

8. APPEALS

8.1. Each application of an appeal shall be made on forms provided by the Board and shall be presented to the ZBA Staff Administrator of the Board who shall sign and date all applications. The ZBA Staff Administrator will advise the Chair of the pending appeal and schedule it for discussion at the earliest possible date.

8.2. The ZBA Staff Administrator and the Code Enforcement Administrator and/or the Building Inspector shall review all applications for appeals for supporting documentation. Upon successful completion of all applications and acceptance of fees, the ZBA Staff Administrator shall post the time and date of the hearing.

8.3. Appeals to the Board may be taken by any person aggrieved, or by an officer, department head, board or bureau of the municipality affected by any decision of an administrative officer. Appeals must be made within thirty (30) days of said decision.

8.4. The Board shall hear all cases within forty-five (45) calendar days of acceptance of the petition unless the applicant agrees to a postponement.

8.5. The Board may hear, affirm, and decide appeals where it has been alleged that there is an error in any order, requirement, decision or determination by an administrative official. The Board may reverse and/or modify such order, requirement, decision, or determination, in whole or in part. The Board may also render determinations on any questions relative to the meaning of the text of the Zoning Ordinance.

- 8.6. Applications for re-hearing must be filed with the ZBA Staff Administrator or designee of the Board within thirty (30) days of the date of decision beginning the next working day the Community Development Department is open to the public following the day the decision is rendered. The request for re-hearing will be presented to the Board for consideration at the next scheduled meeting.
- 8.7. When a request for a re-hearing has been granted the application for the new case must be submitted within thirty (30) days of the date of the decision beginning the next working day the Community Development Department is open to the public following the day the decision is rendered.

9. FORMS

- 9.1. All forms and revisions thereto shall be adopted by resolution and shall become part of the RULES OF PROCEDURE. Said forms are herewith attached (Appendix).
- 9.2. Subsequent amendments of forms shall require the amendment process herein. Fees may occasionally be changed by the Board of Selectmen and are exempt from this requirement. When fees change the Zoning Board Members will receive updated forms.

10. PUBLIC HEARING NOTICE

- 10.1. Public notice of public hearings and each appeal shall be given in the newspaper of local distribution, and shall be posted at the Town Hall and the Community Development Department not less than seven (7) days prior to the hearing, counting the day of posting and the day of the hearing. Such notice shall include the name of the applicant, description of the property, action desired by the applicant, description of the Zoning Ordinance concerned, the type of appeal being made and the time and place of the hearing.

11. ABUTTER NOTIFICATION

- 11.1. Personal notice shall be made by certified mail to the owners of record of property abutting the property concerned. Said notice shall contain the same information as the public notice.
- 11.2. The applicant will be responsible for obtaining a proper list of abutters from the tax records at the Town Hall.

12. REQUIRED INFORMATION FOR APPLICATION

12.1 Letter of Denial

Each variance or special exception application shall contain a letter of denial detailing the primary reasons for the appeal to be before the board. This letter of denial shall include:

- a) The date of code enforcement determination
- b) The name of the code enforcement officer that made the determination
- c) A summary of the project
- d) Any zoning relief required for approval

12.2. Variance History

Each application presented to the board shall have the variance history for the applicable properties in the form of prior Notices of Decision.

13. NOTICES OF DECISION

- 13.1.** Notice of Decisions shall be on a form provided by the Board and shall be sent to the applicant and posted at the Community Development Department. A summary of the decision shall be published in a local newspaper. Notice of Decisions shall be placed on file in the Community Development Department and shall be made available for public inspection within 5 business days of the decision being made.
- 13.2.** Notices of decision are sent for when the board votes to approve or disapprove an application or deny a motion for rehearing. Forty-eight (48) hours prior to these Notices being sent to the applicants or posted for the public they shall be emailed to the Chair of the Board or the Chair's designee(s) for review. If no response is received from the reviewer(s) within that period, then the original Notice of Decision shall be sent/posted to meet any legal timing requirement.

14. SITE OBSERVATION/SITE WALKS

- 14.1.** Board members are encouraged to individually observe the applicant's property and/or GIS review of the case site prior to the scheduled board meetings.
- 14.2.** When the Board deems it necessary for the adequate consideration of an application, a site walk shall be scheduled.
- 14.3.** The Board shall refrain from making decisions on an application while on a site walk.
- 14.4.** Site Walk meeting minutes shall be taken and the Board shall disclose what they have learned/observed while on the site walk and record as such in the hearing minutes.

15. FEES

- 15.1.** Fees are established by the Board of Selectmen and are updated periodically. All fees must be paid when filing the application/appeal.
- 15.2.** Requests for refund of application fees by applicants shall be addressed to the Chair of the Board of Selectmen and copied to the Chair of the Zoning Board of Adjustment. As application fees are set by the Board of Selectmen it is at their discretion that refunds may be allowed.

16. AMENDMENTS TO THE RULES OF PROCEDURE

- 16.1.** The Rules of Procedure may be amended by a majority vote by the Board provided such an amendment is posted and a public hearing held.
- 16.2.** The process to amend the Rules of Procedure is as follows:
 - 16.2.1.** The Board considers the request for an amendment during a public meeting, with the opportunity for the Board to draft edits, concluding the request process with an agreement by majority to a draft amendment.
 - 16.2.2.** The draft amendment is posted and scheduled for review during a public hearing. This review may occur as part of a regular or special meeting.

16.2.3. Once the public hearing occurs, the Board may adopt the amendment by majority vote.

16.3. Upon adoption, the ZBA Staff Administrator shall file a copy of the newly amended Rules of Procedure, signed by the Chair, with the Town Clerk.

16.4. The Board may temporarily waive or modify the provisions of these rules when, in the opinion of the Board, such action is deemed reasonably necessary to effectuate the lawful purposes of the Board's business. The justification for such action shall be stated and noted in the minutes. A majority vote by the Board is required on the proposed waiver.

16.5. These rules of procedures, and any subsequent amendments, shall become effective immediately upon passage by the Board as recorded in the minutes of the meeting at which such action occurs.

16.6. If any portion of these rules shall be held to be invalid for any reason by any court of competent jurisdiction, such holding shall not invalidate in any manner any other provision contained herein.

Date

Chair, Zoning Board of Adjustment