

# **Zoning Board of Adjustment for the Town of Bennington, NH**

## **Rules of Procedure**

### **AUTHORITY**

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and the current Zoning Ordinance and Zoning Map of the town of Bennington, NH.

### **OFFICERS**

1. A **Chair** shall be elected annually by a majority vote of the board in the month of April. 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 in the month of April. The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the board during the absence of the Chair.
3. A **Clerk** shall be elected annually by a majority vote of the board in the month of April. 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 be eligible for re-election.

### **MEMBERS AND ALTERNATES**

1. Up to **five 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.
2. Members must reside in the community 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. Members, including the Chair and all officers, shall participate in the decision making process and vote to approve or disapprove all motions under consideration.

### **MEETINGS**

1. **Regular meetings** shall be held at the Bennington Town Hall, at **7:00 PM** on the **3rd Monday** 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 members, including alternates sitting in place of regular members.

The board will make every effort to ensure that a full five-member board is present for the consideration of any appeal. Failing to have five voting members for a hearing, the applicant will be given the option, prior to the opening of the hearing, to have the hearing at a later date.

If any regular board member is absent from any meeting or hearing, or disqualifies himself 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 himself from sitting in a particular case, as provided in RSA 673:14, he shall notify the Chair 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 Chair or the member disqualifying himself 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

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

- a. Call to order by the Chair
- b. Roll call by the Clerk
- c. Minutes of previous meeting
- d. Unfinished business
- e. Public hearing
- f. New business
- g. Communications and miscellaneous
- h. Other business
- i. Adjournment

(Note: Although this is the usual order of business, the board may wish to hold the hearings immediately after the roll call in order to accommodate the public).

## **APPLICATION/DECISION**

### **1. Applications.**

a. Each application for a hearing before the board shall be made on forms provided by the board. Applications should be submitted no later than 14 days prior to the ZBA's scheduled monthly meeting. The town official receiving the application shall record the date of receipt over his or her signature. The town will notify the Clerk and Chair of the board of adjustment of the received application.

Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the approved written decision.

b. All forms used by the Board, including revisions, shall be approved by vote of the board.

### **2. Public Notice.**

a. Public notice of public hearings on each application shall be published in The Monadnock Ledger-Transcript and shall be posted at the Bennington Town Hall and Dodge Library not less than five days (5) before the date fixed for the hearing. Notice shall include the name of the applicant, description of 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.

b. Personal notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the Planning Board, Board of Selectmen, Conservation Commission, Code Enforcement Officer, 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.

### **3. Public Hearing.** The conduct of public hearings shall be governed by the following rules:

a. The Chair shall call the hearing in session and ask for the Clerk's report on the first case.

b. The Clerk shall read the application and report on how public notice and personal notice were given.

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

- 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.
  - 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 appeal.
  - h. Those appearing in favor of the appeal shall be allowed to speak.
  - i. Those in opposition to the 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 appeal shall be allowed to speak in rebuttal.
  - l. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the Chair not later than 3 days prior to the public hearing.
  - m. The board of adjustment will hear any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance and state zoning law.
  - n. The Chair shall present a summary setting forth the facts of the case and the claims made for each side (see Findings of Facts form in appendix C of the OEP's ZBA Handbook). Opportunity shall be given for correction from the floor.
  - o. The hearing on the appeal shall be declared closed and the next case called up.
4. **Decisions.** The board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. The decision will be final when the board approves the Final Written Decision, inclusive of the Finding of Facts, the Basis for the decision, and the decision itself, including any conditions. Notice of the decision will be made available for public inspection within 5 business days of the Final Written Decision, as required by RSA 676:3 and will be sent to the applicant by mail. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the Planning Board, the Board of Selectmen, Town Clerk, Tax Collector, Code Enforcement Officer, and other town officials as determined by the board. Notice shall be posted at the Bennington Town Hall and Dodge Library within 24 hours of the approved written decision and shall remain for five days.
- 5) **Reconsideration by the Board.** Motions for Rehearing can be received only in the Town office during normal business hours, within 30 days of the final approved written decision. Notification of such a motion shall be sent to the Applicant, Board of Selectmen and Code Enforcement Officer immediately. The board may itself reconsider any decision to grant or deny an application or grant or deny a motion for rehearing, provided such reconsideration is within the 30 day appeal period of the original decision. This 30 day period may be waived in such cases where, in the opinion of the board, strict conformity would not be contrary to the spirit and intent of these rules, the zoning ordinance and the laws.

## RECORDS

- 1. The records of the board shall be kept by the Town Clerk and made available for public inspection at the Bennington Town Hall in accordance with RSA 673:17.
- 2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made. 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 shall be open to public inspection within 5 business days of the public meeting. RSA 91-A:2 II.

**AMENDMENTS**

These rules of procedure may be amended by a majority vote of the members of the Board provided that such amendment is publicly presented at the regular meeting immediately preceding the regular meeting at which the vote is to be taken. The change takes place immediately, following that vote, for any newly submitted completed applications for hearings, but not for any completed applications submitted prior to the time of the change.

**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.

**JOINT MEETINGS AND HEARINGS**

1. RSA 676:2 provides that the board of adjustment may, at the request or approval of the applicant, hold joint meetings or hearings with other "land use boards," including the planning board, the historic district commission, the building code board of appeals, and the inspector of buildings, and that each board shall have 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 Chair of the two boards.
3. A public hearing on any appeal to the board of adjustment will be held jointly with another board 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 in these conditions.

Given our hands and seal on this date, December 20, 2010.

Voting Members: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Alternate Members: \_\_\_\_\_

\_\_\_\_\_

Town Clerk: \_\_\_\_\_