

TOWN OF HENNIKER
NEW HAMPSHIRE



ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURES

Adopted June 15, 2016

ARTICLE I AUTHORITY

- 1.1 Governance** – The Zoning Board of Adjustment of the Town of Henniker shall be governed by the provisions of all applicable State statutes, Town regulations and these rules.
- 1.2 Authority** – These rules are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA) 676:1.

ARTICLE II MEMBERS

- 2.1 Definition of Board** – As used in these rules;, the term "Board" shall mean the Zoning Board of Adjustment duly established by the legislative body of the Town of Henniker under the authority of RSA Chapter 673.
- 2.2 Appointment of Members** – The Board shall consist of five members, appointed by the Board of Selectmen, which shall be termed regular members. Each member must be a resident of the Town of Henniker. Three-year appointments will be made on a staggered basis with no more than 2 members being appointed in any given year.
- The appointment of members shall conform to the terms and requirements of RSA 673:3, and RSA-676:5.
- 2.3 Alternate Board Members** – The Board shall request the Board of Selectmen to appoint, in addition to the regular members, not more than five alternate members, who may serve on the Board per RSA 673:6. The terms of such members shall also be three years and shall be staggered as with regular members
- Alternate members of the Board shall join the permanent members in all presentations, public hearings, and discussions except that such alternates may not vote on any proposal or motion before the Board unless so directed by the Chair.
- In the absence of any permanent member, the Chair shall appoint an alternate to fill such vacancy. The alternates shall be appointed by the Chair on a rotating basis with the Clerk keeping a record of such appointments. Said alternate shall then act as a permanent member. RSA 673:11
- 2.4 Vacancies** – At the direction of the Chair, the Clerk shall give immediate notice of any vacancy to the Board of Selectmen. The Zoning Board of Adjustment shall nominate alternate members to be appointed as full Board members with the alternate member serving the longest in that position being offered the full member position. RSA 673:12, II.
- Any vacancy among the officers of the Board shall be filled by election, for the unexpired term, at the next regular meeting of the Board.
- 2.5 Removal of Members** – Members may be removed by the appointing authority after a public hearing upon written findings of inefficiency, neglect, or malfeasance in office per RSA 673:13 I & II.

ARTICLE III OFFICERS AND DUTIES

3.1 Election of Officers – At the first Board meeting in September, the Board shall elect a Chair and a Vice Chair from the voting members, and such other officers otherwise as it may deem necessary; but in case of failure to elect at the time specified, the election shall take place at the next meeting. The Chair and the Vice Chair, shall hold their respective offices for a term of one year. They shall perform such duties as the Board may prescribe. RSA 673:8 & 673:9

3.2 Duties of the Chair – The Chair shall call the meeting together, preside over all meetings and hearings of the Board, put all questions, maintain order, decide all questions of order and procedure, subject to these rules, and shall appoint any committees found necessary to carry out the business of the Board.

The Chair may present to the Board such matters as in the Chair's judgment require attention.

At the request of any member, the Chair shall direct that the yeas and nays be taken and entered on the record on any question before the Board.

The Chair shall exercise a general supervision over the business, papers, and property of the Board and shall execute all formal documents on behalf of the Board, including signing all notices of decision and public hearing notices.

The Chair shall have the authority to represent the Board before any other Board, group, organization, or media outlet.

3.3 Duties of the Vice Chair – The Vice Chair shall assume the duties and powers of the Chair in the Chair's absence.

3.4 Clerk – The Chair will appoint a designee that shall function as the Clerk for the Board. The Clerk shall administer official correspondence, subject to these rules and at the direction of the Board; shall issue the proper forms, compile all information, maps, and records for the Board's review; shall send all notices required by law; shall keep the minutes of all Board actions and proceedings; shall prepare reports and perform other duties as directed by the Chair; and, shall keep records of its examinations and other official actions.

The Clerk, in consultation with the Chair, shall prepare the agenda for each meeting, provide all supportive documentation, and mail said materials to each Member. The Clerk shall also make public notice of the agenda of each meeting in accordance with the appropriate regulations. Any Member may request and have placed on the agenda any item for discussion.

The Clerk shall perform other Zoning Board of Adjustment duties as directed by the Chair.

ARTICLE IV MEETINGS

- 4.1 Regular Meetings** – Regular meetings shall be conducted by the Board at which applications for development shall be reviewed and acted upon. Regular meetings of the Board shall be held on the third Wednesday of the month unless there is no business to transact, in which case no meeting shall be held.

Meetings are held at the call of the Chairperson and at such other times as the Board may determine.

The Clerk shall give each member of the Board 48 hour's prior notice of the cancellation of such meeting and shall post a notice in at least one public place by the time of the regularly scheduled commencement. Regular meetings shall normally start at 7:00 p.m. and terminate on or before 10:00 p.m. regardless of all business, as listed on the agenda, being completed.

- 4.2 Special Meetings** – Special meetings of the Board may be called by the Chair provided that at least 48 hours commencement notice of the time, place, and business of such meeting be given each member of the Board.

Upon the written or oral request of at least three Board members, a special meeting shall be called. Said meeting shall take place not later than one week after the three member shall have made the request for a special meeting.

- 4.3 Place of Meeting** – Meetings of the Board shall normally be held at Town Hall, in the Town of Henniker, or at some other public place in the Town of Henniker, or at the site of a proposed project for the express purpose of inspecting said site as part of the review for a proposed project.

- 4.4 Open Meetings** – All meetings of the Board and its committees shall be open to the public except as stipulated by State Law.

- 4.5 Notice of Meetings** – Notice of the time, date, and place of any open meeting of the Board shall be posted in two public places, such as the Town Hall, Library, Post Office and/or the Town website at least 24 hours in advance of the meeting, excluding Sundays and legal holidays, per RSA 91-A:2.

Notice when an application has been filed and placed on the Zoning Board of Adjustment agenda for determination of completeness and/or public hearing shall be sent by certified mail at least 5 days before the date of the meeting to all abutters, as defined in RSA 676:7, I(a). Notice shall also be posted in two public places, such as the Town Hall, Library, Post Office and/or Town website and published in a newspaper of general circulation at least 5 days before the date of the meeting. RSA 676:7, I (b) & 675:7, I

- 4.6 Minutes** – The recording secretary shall take complete and accurate minutes, prepare in writing the official minutes of all meetings; show the vote of each member upon every question, or if absent, disqualified, or failing to vote so indicate; include in the minutes the names of all witnesses, a summary of the facts on which the decision is based and the decision rendered; and to deliver to the clerk within 5 business days the completed document for submission to the Board for acceptance.

ARTICLE V CONDUCT OF BUSINESS

- 5.1 Call to Order** – Meetings shall be called to order by the Chair, or in the Chair's absence, by the Vice Chair. In the absence of both, the Clerk shall call the meeting to order after which those Board members present may elect a Chair pro tem.
- 5.2 Quorum** – The Board shall only conduct a meeting and transact business when a quorum is present. A majority of the membership, three (3) regular members and/or alternates shall constitute a quorum for the conduct of business.
- 5.3 Order of Business** – For each regular meeting the order of business, unless otherwise ordered by the Chair, shall be as follows, and shall be shown on the agenda:
- I. Call to Order
 - II. Attendance
 - III. Approval of Minutes
 - IV. Public Hearings, Continued
 - V. Public Hearings, New
 - IV. Other Business
 - V. Adjournment
- 5.4 Conduct of the Public Hearing** – The Chairperson, or in his/her absence, the Vice Chair shall preside at the public hearing, and shall:
- A. Convene the meeting and state the manner in which the hearing shall be conducted
 - B. Read the legal notice of the case
 - C. Confirm that all abutters were notified of the case and that the hearing was properly posted
 - D. Determination by Board if the application should be considered a Development of Regional Impact (RSA 36:57)
 - E. Call upon the applicant, or representative of any proposal, to present the application
 - F. Open the public hearing
 - G. Request that the Recording Secretary read any written testimony received concerning the proposal into the record, unless waived by the Chair or the party who submitted the correspondence
 - H. Members of the Board may ask questions at any point during the presentation
 - I. Call upon those appearing in favor of, or in opposition to, the proposal to direct questions or comments to the Chair. Each person must state their name when addressing the Board
 - J. Call the hearing to a close, as appropriate, outlining the Board's anticipated procedure concerning the proposal

- 5.5 Presentations During Public Hearings** – The Chair shall request that at the start of each Public Hearing a representative of the proposal give a brief presentation of the request before the Board. The brief presentation shall be adequate so as to inform all abutters and members of the public as to the nature of the project in order that they may comment on the proposed project.
- 5.6 Permission Required to Address the Board** – Persons other than Members of the Board shall not be permitted to address the Board except by consent of the Chair. The speaker shall not enter into any debate with anyone present and shall speak only to the subject matter indicated. A group may have one person act as its spokesman and shall follow the same rules.
- 5.7 Minutes** – The minutes of previous meetings shall be submitted for approval at the next regular meeting. The Chair shall call for any corrections to the minutes. If there are none, a motion shall be made to approve the minutes as presented. If there are corrections, the corrections shall be handled by general consent after which, a motion shall be made that the minutes are to be approved as amended.
- Corrections may be made to formerly approved minutes by motion duly passed by a majority vote of the membership.
- 5.8 Recess of the Meeting** – The Chair may order a temporary halt to the proceedings of the meeting. Said recess should normally not exceed 30 minutes. Upon ordering the recess, the Chair shall state the time and place for reconvening.
- 5.9 Continuance of the Hearing** – The Board may continue a hearing if the application cannot be completed on the day set. No further public notice shall be necessary provided that the date, time, and place of the continued hearing shall be announced before adjournment.
- 5.10 Adjournment of the Meeting** – The Board shall adjourn each meeting to its next scheduled meeting or to a special meeting specifying time, date, and place.
- If all business has not been concluded by 10:00 PM, the Chair shall poll the attending Members to determine if the Board should continue beyond 10:00 PM, or continue the matters on the agenda to the next appropriate meeting, or continue to a special meeting specifying time, date, and place.
- 5.11 Application and Decision^a** – Appeals from an Administrative Decision taken under RSA 676:5 shall be filed within 30 (thirty) calendar days of the decision. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Town Hall Office Staff, who shall record the date of the receipt. All forms and revisions prescribe shall be adopted by resolution of the Board and shall become part of these rules of procedure.

^a Added June 15, 2016

ARTICLE VI VOTING

- 6.1 Motion to be Stated by the Chair** – When a motion is made and seconded, it shall be stated by the Chair before debate. At the request of the Chair or any Member of the Board, the motion shall be in writing. A motion may not be withdrawn or amended by the mover without the consent of the second and approval of a majority of the Board.
- 6.2 Majority Vote Required** – Determinations on any matter before the Board shall require the concurrence of a majority of the Members present and voting. ^bPer RSA 674:33, a minimum of three positive votes are required in order to grant approval on an application.
- 6.3 Tie Vote** – A tie vote of the members present and voting constitutes no action. If the Board is unable to take action, it shall continue the matter to another meeting for further consideration.
- 6.4 Decisions** – The Board shall act to approve, disapprove, or conditionally approve the application within 65 days (per RSA 676:4, I (c)(1)). Notice of decision will be made available for public inspection at the Town Hall within 5 (five)^c Business days after the decision is made, as required in RSA 676:3. If the application is disapproved, the Board shall provide the applicant with written reasons for this disapproval.
- 6.5 Conflict of Interest or Prejudgment** – In accordance with RSA 673:14, no member shall participate in deciding or shall sit upon the hearing of any question if that member has a direct personal or pecuniary interest in the outcome which differs from the interests of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.

When an uncertainty arises as to whether a member is disqualified in particular circumstances, the Board shall, at the request of that member or another Board member, vote on the question, but such vote shall be advisory only and non-binding on the member in question. Any non-board person with a direct interest in the outcome may voice an objection to a Board member's participation, setting forth specific reasons. Any such objection shall be made either prior to or at the commencement of the public hearing, or at such later time as the facts claimed to warrant disqualification first become known.

A Member who has disqualified himself/herself shall remove himself/ herself from the Board, and shall sit with the public until such time as the Board has completed its consideration of the application at that meeting. The member may then return to the Board. The disqualified member shall not participate in the Board's subsequent consideration of that application. If as a result of disqualification the Board loses its quorum, then there shall be an adjournment or recess of consideration of the matter until there is a quorum either at the same meeting or the next available meeting.

^b Added June 15, 2016

^c Added June 15, 2016

- 6.6 Vote of Absent Members** – Unless a Member has attended the meetings on a matter or examined the record and become familiar with the evidence presented from the minutes of the proceedings, he or she shall not vote on the matter.

When an alternate member has been appointed to fill the position of a full member at a meeting because of the full member's absence, the alternate member shall continue to sit on any continued applications that were started at that meeting, in the place of the full member, at subsequent meetings until the applications are decided.

- 6.7 Extension Of Time** – Any three Board Members may request an extension of time before voting on any proposal before the Board. If such an extension is requested, the Board shall schedule a special meeting not more than two weeks from the date of the request to take action on the proposal. There shall be no new business placed on the agenda of any special meeting scheduled under this section.

- 6.8 Records** – The records of the Board shall be kept by the Land Use Office and shall be made available for public inspection at the Town Hall during normal business hours. Records shall include meeting minutes, notices of decision, correspondence to and from the Board, all application material, and evidence submitted to the Board.

ARTICLE VII JOINT MEETINGS AND HEARINGS

- 7.1** The Zoning Board of Adjustment may hold joint hearings with other land use boards. Each Board shall have discretion whether or not to hold such joint meetings or hearings.
- 7.2** Joint business meetings with another local land use board may be held at any time when called jointly by the chairman of the two boards.
- 7.3** A joint public hearing must be a formal public hearing when the subject matter of the hearing is within the responsibilities of the boards convened.
- 7.4** The Planning Board Chair shall chair all joint meetings and public hearings when the subject matter involves the Planning Board.
- 7.5** The rules of procedure for joint meetings and hearings, the subject matter of which involves the Zoning Board of Adjustment, shall be the same as these rules of procedure except that the order of business shall be as follows:
- A. Call to order by the Chairman
 - B. Introduction of members of both Boards by Chairman
 - C. Explanation of reason for joint meeting/hearing by Chairman
 - D. In the case of a public hearing relative to a requested permit or an application for a plat approval, or both, the applicant shall be called to present the proposal
 - E. Adjournment
- 7.6** Each board involved in a joint public hearing makes its own decision, based on its criteria for the particular matter

ARTICLE VIII MISCELLANEOUS

- 8.1 Adoption** – Upon adoption, the Clerk shall file a copy of these rules and all amendments with the Town Clerk as a public record.
- 8.2 Amendments** – These rules may be amended at any regular meeting by an affirmative vote of a quorum of the Board provided that such amendment has been presented in writing to each Member of the Board at least 5 days preceding the meeting at which the vote is taken.
- 8.3 Right to Know Law** – The Zoning Board of Adjustment will comply with the letter and spirit of the Right-to-Know Law, RSA 91-A, and with the Due Process rights of parties before the Board
- 8.4 Attendance** – A Member may be excused for nonattendance of a meeting or hearing for valid reasons if he or she notifies the Chair or Clerk prior to the meeting or hearing.
- Should any member miss three unexcused consecutive meetings, or more than four unexcused meetings annually, that member may be recommended to the Board of Selectmen for removal.
- 8.5 Effective Date** – 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.
- 8.6 Validity** – 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.