

Town of Raymond, NH Zoning Board of Adjustment



Rules of Procedure

ADOPTED
11/12/2008

LAST AMENDED
04/24/2019

ARTICLE I – AUTHORITY AND MEETING BASICS

1.100 AUTHORITY

These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and the Town of Raymond Zoning Ordinance.

1.200 MEETING DATE, TIME AND PLACE

Zoning Board of Adjustment (ZBA) meetings are held on the fourth Wednesday of every month on an as-needed basis, unless otherwise designated by the Chair. Additional meetings may be held if deemed necessary by the Chair. All ZBA meetings shall begin no later than 7:30 p.m. unless otherwise specified. In the event of inclement weather, the Wednesday following the canceled meeting shall serve as the makeup date, unless another date is specified. All ZBA meetings shall be held in Room 109 at Raymond High School, located at 45 Harriman Hill Road, unless otherwise specified.

ARTICLE II – BOARD MEMBERSHIP

2.100 MAKEUP OF BOARD

In accordance with the local legislative body, ZBA members shall be appointed by the Board of Selectmen. The ZBA shall consist of a maximum of five (5) Members, one (1) of which is to be a Selectman serving as an ex officio Member, and up to five (5) Alternate Members. Members and Alternates are required to be residents of the Town of Raymond, NH.

2.200 TERM LENGTH

ZBA Members shall be appointed to terms of three (3) years, per RSA 673:5(II). Alternate Members shall be appointed to terms of three (3) years, per RSA 673:6(I)(a). The Town Clerk shall record the appointment and expiration dates of the terms of each Member and Alternate Member.

2.300 SWEARING-IN

Each newly-appointed Member and Alternate Member must sign appointment papers and be sworn-in by the Town Clerk prior to being eligible to serve on the Board.

2.400 PROCESS FOR APPOINTMENT OF ALTERNATE MEMBERS

Interested residents shall declare their interest in serving as an Alternate Member to the Chair at a posted meeting of the Board. The prospective Alternate Member must attend three (3) consecutive ZBA meetings prior to consideration for appointment as an Alternate Member. Once three (3) consecutive meetings have been attended, the prospective Alternate Member will be interviewed by the Board and considered for a recommendation to the Board of Selectmen for appointment.

2.500 PROCESS FOR FILLING VACANT MEMBER SEATS

In the event that a Member's seat becomes vacant due to resignation or any other reason, the Board of Selectmen shall appoint a new Member to fill the vacant seat for the remainder of the vacated Member's term, per RSA 673:12(II). The Chair may designate an Alternate Member to fill the vacant seat temporarily until the Board of Selectmen permanently fills the seat, per RSA 673:12(III).

2.600 BOARD TRAINING WITH LEGAL COUNSEL

A training session with the Board's Legal Counsel will be scheduled within three (3) months of the annual Town Meeting.

2.700 INDIVIDUAL BOARD MEMBER TRAINING AND REFERENCE MATERIALS

Pursuant to RSA 673:3-a, it is recommended that any new Member of the Zoning Board of Adjustment undertake six (6) hours of training within six (6) months of assuming their position on the Board for the first time.

Community Development Department shall provide new Members with the following documents and reference materials and recommends that new members review them. The materials provided shall include but not be limited to:

- New Hampshire Planning & Land Use Regulation (RSA book)
- Town of Raymond Zoning Ordinance
- Town of Raymond Floodplain Development Ordinance
- The Board of Adjustment in New Hampshire – A Handbook for Local Officials (by the NH OSI)

ARTICLE III – BOARD OFFICERS

3.100 PROCESS FOR ELECTING OFFICERS

During the first meeting following the annual Town Election, the current Chair shall begin the meeting by requesting nominations for the position of Chair. The current Chair will then call for a vote on each person nominated in the order the nomination was received. This procedure will continue until a Member receives a majority vote. Once a Member has been elected as Chair, said Member shall then conduct elections for the positions of Vice Chair and Clerk, in the manner described above.

3.200 CHAIR

A Chair shall be elected by a majority vote of the Board in the manner described in Article III, Section 3.100 of these Rules of Procedure. The Chair shall preside over all meetings and shall perform other duties customary to the office. The Chair shall be responsible for conduct and decorum of the meeting. The Chair shall also have the responsibility to ensure all parties receive a full and fair hearing before the Board, and to ensure that these Rules of Procedure and applicable State Laws are adhered to.

3.300 VICE CHAIR

A Vice Chair shall be elected by a majority vote of the Board in the manner described in Article III, Section 3.100 of these Rules of Procedure. The Vice Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters that come before the Board in the absence of the Chair.

3.400 CLERK

A Clerk shall be elected by a majority vote of the Board in the manner described in Article III, Section 3.100 of these Rules of Procedure. The Clerk shall preside in the absence of both the Vice Chair and Chair and shall have the full powers of the Chair on matters that come before the Board in the absence of both the Vice Chair and Chair. The Clerk shall also be responsible for keeping minutes during posted meetings for which the Assistant Planner and Code Enforcement Officer are not present. Additionally, the Clerk, or a Member designated by the Chair in the absence of the Clerk, shall take minutes and, if appropriate, photographs, during all site walks.

3.500 TERM LENGTH FOR OFFICERS

Officers shall be elected to terms of one (1) year and shall be eligible for re-election.

3.600 INELIGIBILITY OF HOLDING OFFICE

Alternate Members shall not be eligible to hold office.

ARTICLE IV – AGENTS OF THE BOARD

4.100 BOARD STAFF

The Board may appoint other agents, as necessary, to perform duties for the Board. The following are designated agents of the Board.

- a. **Code Enforcement Officer** – Shall provide technical support and clarification, as needed, to the Zoning Board of Adjustment, and fulfill other duties as may be determined by the ZBA.
- b. **Assistant Planner** – Shall provide technical support and clarification, as needed, to the Zoning Board of Adjustment. The Assistant Planner shall also take meeting minutes, issue notice for all meetings, and fulfill other duties as may be determined by the ZBA.

ARTICLE V – MEMBER RESPONSIBILITIES

5.100 ATTENDANCE

Whereas the regular attendance of ZBA Members and Alternate Members is critical to the duties and responsibilities of the Board, and its duty to the public to provide an efficient and effective Board, Board Members and Alternate Members should make every effort to attend every scheduled meeting of the ZBA. In the event that a Member or Alternate Member will be unable to attend a meeting or site walk, said Member or Alternate Member shall notify the Chair, Vice Chair or Assistant Planner as soon as possible. If notification is made, the Member or Alternate Member can be granted an excused absence. Multiple unexcused absences shall be grounds for a request by the Board for resignation.

5.200 DISQUALIFICATION OF MEMBER

If a Member becomes ineligible to serve on a specific case, per RSA 673:14, said Member shall notify the Chair as soon as possible. The Chair shall then designate an Alternate Member to sit in that Member's place. The ineligibility of a Member shall be announced prior to the start of the hearing. Any Board Member may request a non-binding vote of the Board regarding the eligibility of another Member. This vote can only be requested by a Board Member; Alternate Members cannot request such a vote. Any Member or Alternate Member disqualifying themselves from a case shall absent themselves from the Board table during the public hearing. When recused, the recused person shall not participate in further discussions, unless s/he clearly states for the record that s/he is doing so only as a general member of the public per the Town of Raymond Code of Ethics.

5.300 REMOVAL OF MEMBERS

Board Members and Alternate Members may be removed for inefficiency, neglect of duty or malfeasance in office, by the Board of Selectmen, per RSA 673:13(I). If a Member or Alternate Member is absent for three (3) consecutive meetings or has four (4) or more total unexcused absences within a calendar year, then that Member or Alternate member may be subject to removal proceedings.

5.400 MEMBER CONDUCT

Board Members and Alternate Members shall not discuss elements of an application with other Board Members or Alternate Members, Applicants or the general public outside of a noticed public hearing. If a Board Member or Alternate Member wishes to enter onto a site to gather information, they may do so only under the parameters of Article VIII, Section 8.600 of these Rules of Procedure, entitled Conduct of Site Walks.

5.500 CODE OF ETHICS

Board Members and Alternate Members are subject to the Town of Raymond Code of Ethics.

ARTICLE VI – APPEALS TO ZONING BOARD OF ADJUSTMENT

6.100 SCHEDULING OF APPEALS TO THE ZBA

Appeals to the ZBA concerning any matter within the Board's powers as set forth in RSA 674:33 shall be scheduled for a public hearing before the ZBA within 30 days of being filed with the Community Development Department, per RSA 676:7. Appeals from Administrative Decision taken under RSA 676:5 shall be filed with the Community Development Department within 45 days of the date of the decision. Once filed, a public hearing shall be scheduled before the ZBA within 30 days.

6.200 APPEALS REQUIRING ADDITIONAL INFORMATION AND REVIEW

Per RSA 676:5, the Board of Adjustment may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, and other matters which may be required by particular appeals or applications.

- a. When reviewing a land use application, the ZBA may require the applicant to reimburse the Board for expenses reasonably incurred by obtaining third party review and

consultation during the review process, provided that the review and consultation does not substantially replicate a review and consultation obtained by the Planning Board.

- b. When retaining the services of a third-party reviewer, the ZBA shall require detailed invoices with reasonable task descriptions for services rendered. Upon request of the applicant, the ZBA shall promptly provide a reasonably detailed accounting of expenses, or corresponding escrow deductions, with copies of supporting documentation.

ARTICLE VII – NOTICE FOR ZONING BOARD OF ADJUSTMENT MEETINGS

7.100 AGENDAS

Agendas for ZBA meetings shall be posted in the Town Office Lobby and in the display case located outside the Recreation/Public Works Office Building. Agendas shall be posted no later than 24 hours prior to the scheduled meeting. Agendas shall also be distributed to Members and Alternate Members no later than the Friday prior to the next meeting, unless otherwise specified.

7.200 LEGAL NOTICES

Public hearings held by the Zoning Board of Adjustment shall be noticed in accordance with RSA 676:7.

7.300 LEGAL NOTICE OF ABUTTERS

All legal notices mailed to abutters and associated professionals for public hearings before the Zoning Board of Adjustment shall be sent via certified mail with return receipt requested.

ARTICLE VIII – ZONING BOARD OF ADJUSTMENT MEETINGS

8.100 GENERAL PROVISIONS

- a. **QUORUM** – A quorum shall be three (3) members, including any Alternate Members sitting in place of absent Members.
- b. In the event that a quorum of the Board is present, but less than five (5) Members are seated, the applicant shall be informed that they have the opportunity to postpone a hearing. If the applicant opts to proceed with a hearing, then a vote by a Board consisting of fewer than five (5) Members cannot constitute grounds for rehearing.
- c. **MOTIONS** – A motion made, and duly seconded, shall only be carried by an affirmative vote of at least three (3) voting Members serving on the case. Voting Members may include any Alternate Members sitting in the place of regular Members.
- d. The concurring vote of three (3) Members of the Board shall be necessary to reverse any action of an Administrative official, or to decide in favor of the applicant on a matter of which it is required to pass.

8.200 SEATING OF ALTERNATE MEMBERS

The Chair shall select an Alternate Member to sit in place of an absent, recused or otherwise ineligible Member, on a rotating basis, as needed. Said Alternate Member shall remain seated as a Member of the Board until the regular Member can return to their seat.

In the event an Alternate Member is chosen to sit in place of any absent Member during a public hearing, said Alternate Member shall remain seated in the place of any absent Member until the Board renders a final decision, to the extent possible.

8.300 ROLE OF ALTERNATE MEMBERS

Alternate Members may ask questions and otherwise participate in all discussions, except those from which they recuse. When not sitting as a Member, Alternate Members shall not make, second or vote on any motions.

8.400 DECORUM OF THE MEETING

The Chair shall be responsible for the conduct and decorum of the meeting. All persons speaking should address only the Board, through the Chair. The Chair will not allow cross-witness arguments or cross-examination. Questions may be raised (e.g. abutter question to an applicant), but the questioner should address the Chair; the Chair will repeat the question in a manner which is impartial and seeks the type of information the Board needs to make its decision.

Board Members and Alternate Members will conduct themselves in a polite manner. Disagreements on positions are to be expected, but all Members and Alternate Members should interact with each other, applicants, expert witnesses and the public with respect. The Chair may ask a Member or Alternate Member to refrain from negative behavior. The Chair may request that a member of the public stop talking and may request that the person leave the room. An applicant may be warned that the hearing in progress will cease and be continued to a later date.

8.500 CONDUCT OF MEETINGS & PUBLIC HEARINGS

Zoning Board of Adjustment meetings and public hearings will generally be conducted in the following manner:

- I. Advise those in attendance of the Board's title and function
- II. Roll call by the Chair – Indicate excused or unexcused absence for any Board members not in attendance.
- III. List the meeting's activities – Number of cases, names of applicants, and order heard.
- IV. Approval of Minutes
- V. Public Hearings:
 - a. Announcement of application by Chair
 - b. Reading of legal notice
 - c. Reading of abutters list
 - d. Ask if anyone in attendance was not announced as an abutter who believes they are an abutter. If there is, this must be resolved before proceeding.
 - e. Announcement of any disqualified members. If less than five (5) members are present, inform applicant of three (3) member requirement for positive votes.
 - f. Presentation of the application by the applicant or authorized agent
 - i. Testimony from abutters in favor of appeal

- ii. Testimony from abutters opposed to appeal
 - iii. Testimony from other interested parties
 - iv. Rebuttal by the applicant to abutters/other interested parties
 - v. Rebuttal by the abutters/other interested parties to applicant
 - vi. Closing statements by applicant or authorized agent
 - vii. Close public information portion of meeting
 - g. Deliberative Session (if necessary)
 - h. Exit Deliberative Session (if necessary)
 - i. Read through voting worksheets when discussion has completed
 - j. Receive Board motions, if offered
 - k. Announce decision of the Zoning Board of Adjustment (approval, denial or continuance)
- VI. Other Business
- VII. Adjournment

8.600 CONDUCT OF SITE WALKS

The purpose of a site walk is to review a plan and/or specific aspects that can be better understood through personal observation. A site walk shall be considered a public meeting. Therefore, notice shall be required, as well as minutes taken, and the public shall be allowed to attend and observe. If the Applicant refuses site access to the Board, or to the non-Board public, then such action may be a basis for denial of an appeal.

While on a site walk, questions should be limited to the plan and no deliberation shall take place. ZBA Members, staff, the applicant and the public should stay in close proximity so that all questions can be documented in the minutes.

Board Members may only enter onto a site independently of a formal site walk with previous permission from an Applicant and only in the presence of a Town staff member. The Town staff member shall report to the non-attending Members of the Board on what took place during such a visit.

ARTICLE IX – ZONING BOARD OF ADJUSTMENT DECISIONS

9.100 ISSUANCE OF DECISIONS

A written Notice of Decision, including any conditions required by the Board, shall be made available to the applicant, and made available for public inspection within five (5) business days of the vote, in accordance with RSA 676:3.

9.200 REQUESTS FOR REHEARING OF ZBA DECISIONS

In accordance with RSA 677:2, any party may submit a written appeal/request for a rehearing within 30 days of the date of the original decision. The ZBA may grant such a rehearing if, in its opinion, the appellant identifies good reason within their request for rehearing. The ZBA also reserves the right to call for a rehearing, within 30 days of the date of the original decision, if necessary.

ARTICLE X – ZONING BOARD OF ADJUSTMENT RECORDS

10.100 RECORD KEEPING

The records of the Zoning Board of Adjustment shall be kept by the Assistant Planner and made available for public inspection at the Community Development Department Office.

10.200 MEETING MINUTES

Zoning Board of Adjustment meeting minutes shall be open to public inspection and placed on file with the Town Clerk not more than five (5) business days after the public meeting as required by RSA 91-A:2(II). After the meeting minutes have been approved by the Zoning Board of Adjustment, the Assistant Planner shall destroy all means employed to prepare the minutes. Any means utilized to prepare the minutes that are not destroyed shall be permanently retained and made available for public inspection per RSA 91-A.

ARTICLE XI – AMENDMENTS

11.100 PROCEDURE TO AMEND THE RULES OF PROCEDURE

These Rules of Procedure may be amended by a majority vote of the Members of the Zoning Board of Adjustment, provided that any amendments are read at a regular meeting of the Board. Amended Rules of Procedure shall be placed on file with the Town Clerk.