

# ZONING BOARD OF ADJUSTMENT

## TOWN OF SPRINGFIELD

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### Rules of Procedure

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## Rules of Procedure (cont.)

### Section 1: Authority

- a. These By-Laws are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance of the Town of Springfield.
- b. The Board, by at least three concurring votes, may waive any provisions of these rules not otherwise mandated by state or federal law or by town ordinance.

### Section 2: Members and Alternates

- a. Regular members are ~~five~~ three residents of the Town of Springfield elected at Town Meeting and shall serve for staggered three year terms. Regular members are expected to attend every meeting of the Board to exercise their duties and responsibilities. Any member who is unable to attend a meeting or disqualified from participating in a particular case shall notify the chairperson as soon as possible.
- b. Up to five alternate members shall be appointed by the Board and are to be residents of the Town of Springfield. They shall serve for staggered three year terms. Alternate members are encouraged to attend all meetings to familiarize themselves with the workings of the board and to stand ready to serve whenever regular members of the board are unable to fulfill their responsibilities.
- c. All regular and alternate members present at a meeting of the Board will be entitled to vote on procedural business of the Board, such as the adoption of rules and the election of officers.

### Section 3: Officers

- a. A Chairperson shall be elected annually in the month of April by a majority vote of the Board. Said Chairperson shall serve for one year and shall be eligible for reelection. The Chairperson shall preside over meetings and hearings of the Board, shall appoint such committees as directed by the Board and shall affix his or her signature in the name of the Board.
- b. A Vice—Chairperson shall be elected annually in the month of April by a majority vote of the Board. Said Vice—Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters which come before the Board during the absence of the Chairperson.
- c. A Clerk shall be appointed by the Board. The Clerk shall maintain a record of all meetings, transactions, and findings of the Board, and perform such other duties as the Board may direct.

## Rules of Procedure (cont.)

### Section 4: Meetings

#### 1. Chair of Meetings.

The Board chairperson shall preside over all meetings of the Board. In the absence of the chairperson, the vice-chairperson shall preside. If both the chairperson and the vice-chairperson are absent, the members of the Board shall choose an acting chairperson at the beginning of the meeting.

#### 2. Disqualification.

If any member finds it necessary to disqualify him/herself from sitting on a particular case, as provided in RSA-763 673:14, he/she shall notify the chairperson 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, another member of the Board, the applicant, or any abutter 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 chairperson or the member disqualifying him/herself shall announce the disqualification before the beginning of the public hearing on the case. The disqualified member shall absent him/herself from the board table during the public hearing and during all deliberation on the case.

#### 3. Order of Business for regular meetings shall be as follows:

- a. Call to order ~~by the Chairman~~
- b. Roll call by the Clerk.
- c. Minutes of previous meeting.
- d. Public hearings continued from previous meetings
- e. Public hearings on new appeals
- f. Other business continued from previous meetings
- g. Other new business
- h. Communications and miscellaneous (if time)
- i. Adjournment

The order of business may be changed by a majority vote of the Board members present.

## **Rules of Procedure (cont.)**

**4. Quorum.** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members. RSA 674:33, III provides that “[t]he concurring vote of 3 members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.” For this reason, the Board will make every effort to ensure that a full five-member Board is present for the consideration of any appeal. In the absence of a full five-member Board, applicants shall have the option of continuing the hearing on their application to a later date for consideration by a full five-member Board. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chairperson 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.

### **5. Regular meetings**

Shall be held at the Town Offices at 7:00 P.M. on the first Tuesday of each month. Other meetings may be held at the call of the Chairperson, provided public notice and notice to each member is given in accordance with RSA 91-A:2 II. The Chairperson may cancel any regular meeting if no appeals have been submitted to the Board prior to the application deadline for that meeting, and if there is no other business that needs to be conducted by the Board. The Chairperson may change the date of a regular meeting after informal consultation with the members of the Board.

### **6. Time Limit.**

The Board will not begin considering a new matter after 10:00PM and will conclude the meeting no later than 10:30PM. When the Board adjourns a meeting without having concluded all scheduled business, it may choose to hold a special meeting to deal with the remaining business from the meeting, or to continue to the next regularly scheduled meeting. The Board may decide to modify these time limits for a meeting by majority vote at the beginning of the meeting, or by unanimous vote at any other time during the meeting.

## Rules of Procedure (cont.)

### Section 5: Application/Decision

#### 1: Applications

- a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Clerk of the Board or his/her designee. The date of acceptance of the application shall be recorded over his or her signature.
- b. All owners of the property in question must consent to the application, either by signing the application form itself or by submitting a notarized written consent prior to the public hearing.
- c. No appeal shall be considered to have been properly filed unless the appropriate forms have been completed, accompanied by the list of abutters and others as required by RSA 676:7, and the appropriate fees.
- d. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.
- e. ~~At each meeting, the~~ clerk shall ~~present~~ provide to the Board, all applications that have been received by him or her at least 15 days before the date of the meeting hearing.
- f. Clerk shall provide copies of all complete application to the board 5 business days prior to hearing.
- f.g. All forms and revisions, application fees and abutter notification fees shall be adopted by resolution of the Board and shall become part of these rules of procedure.
- g.h. Motions for rehearing of any decision of the Board under RSA 677:2 shall be made within 30 days after the vote which granted or denied the application; provided however, that if the moving party shows that the minutes of the meeting at which such a vote was taken, including the written decision, were not filed within 144 hours of the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefore, within 30 days after the date on which the written decision was actually filed.
- h.i. Upon the filing of a motion for a rehearing RSA 677:3 provides that the Board of Adjustment shall within 30 days either grant or deny the motion, or suspend the decision complained of pending further consideration.
- i.j. The Board will not accept motions to reconsider decisions on motions for rehearing.
- j.k. Applicants or interested parties may not contact members of the Board of Adjustment outside a public meeting with regard to an application pending before the Board.

## Rules of Procedure (cont.)

### Section 5: Application/Decision - continued

#### 2: Application Notes

All applications for variance or special exception must include a scale drawing sufficient to show dimensions of the property, distances of existing and proposed structures from the boundary lines and any other features pertinent to the application. It is not necessary in all cases for submissions to be prepared by professionals. However, if:

- a. lot lines are in question, the drawing needs to be done by a licensed surveyor
- b. wetlands are in question, they need to be delineated by a certified wetland scientist
- c. soils are in question, they need to be identified by a certified soil scientist
- d. a septic system is in question, it needs to be done by a licensed septic system designer
- e. a portion of the lot in question falls under the jurisdiction of the Comprehensive Shoreline Protection Act, the jurisdiction area shall be shown

If, in the opinion of the Board, outside expert opinion(s) is needed in order to make an informed decision, the Board may contract with planners, engineers, architects and other consultants for such services as it may require. The applicant shall be informed before the Board engages consultants for this purpose and the expense for same shall be born by the applicant. The applicant shall deposit funds with the Town Treasurer for these expenses in such amounts as determined by the Board. These funds shall be held and disbursed under the provisions of RSA 673:16. Failure of the applicant to deposit funds as directed shall render the application incomplete and the appeal denied.

~~Should the Board requires that the plans decision be recorded at the Sullivan County Registry of Deeds, it is the applicant's responsibility to meet the Registrar's requirements for doing so. This section will move to Decisions and become H in that location.~~

#### 3: Applicant's Failure To Appear

- a. If the applicant fails to appear at a scheduled hearing without informing the Zoning Board Chairperson in advance, the application will be deemed to have been withdrawn without prejudice.
- b. The applicant may resubmit the original application, but must repay all application and abutter fees. The Zoning Board may, in exceptional circumstances, grant a refund of the fees for a resubmitted application.

## Rules of Procedure (cont.)

### Section 5: Application/Decision - continued

#### **4: Decisions**

- a. The Board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions or limitations, or deny the appeal. Any decision of the Board shall require the passage of a motion for that decision. The failure of a motion for a particular decision is not equivalent to the passage of a motion for any alternative decision.
- b. Votes on a motion for a decision shall be by roll call of the members of the Board. Passage of a motion to approve an appeal requires three votes in favor, regardless of the number of Board members voting on the motion. Passage of a motion to deny an appeal requires three votes in favor with five voting Board members, two votes in favor with four voting Board members or one vote in favor with three voting Board members.
- c. Findings of fact and reasons for a decision may be incorporated in the motion for decision, or the Board may choose to hold separate deliberations, either later in the same meeting or in a subsequent meeting, to adopt findings of fact or a statement of the reasons for the decision.
- d. The Board may optionally choose to hold separate deliberations on the precise language of the notice of decision later in the same meeting or in a subsequent meeting.
- e. A decision of the Board shall not be final for purposes of starting the appeal period until the Board has concluded all deliberations relating to that decision.
- f. Notice of the decision will be made available for public inspection within 144 hours [RSA 676:3] (or 5 “business days” [91-A:2, II], whichever is less), as required by RSA 676:3, and will be sent to the applicant by certified mail. If the appeal is denied, the notice shall include the reasons therefore.

## Rules of Procedure (cont.)

### Section 5: Application/Decision - continued

#### 4: Decisions - continued

g. Notification of the decision shall be made on a form provided by the Board and shall also be given to the Planning Board, the Board of Selectmen, the Town Clerk and other town officials as determined by the Board, and filed in the records of the Board. Notice shall be posted in the same two locations as the hearing notices.

H. The Board requires that the decision be recorded at the Sullivan County Registry of Deeds. Moved from Application Notes.

#### 5: Fees

Filing fees must be submitted with the application form. The fees for all appeals shall be adopted by resolution and shall become a part of these Rules of Procedure. The fees are payable to the Town of Springfield and will include an application fee as well as a fee for mailings to be sent to each abutter and others as required by RSA 676:7. Consult with Selectmen to confirm fees being collected are adequate.

#### 6: Forms

All forms and revisions thereof shall be adopted by resolution and shall become a part of these Rules of Procedure.

#### 7: Amendments

These Rules of Procedure may be amended by majority vote of the members provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken.

#### 8: Public Hearing

The procedure for public hearings shall be as follows except when the Board chooses otherwise:

- a. The Chairperson shall call the meeting to order and call for the Clerk's report on the first case.
- b. The Clerk shall read the application and report on the manner in which public notice and personal notice were given.
- c. 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.
- d. The applicant shall be called to present his case.
- e. Those appearing in favor of the case shall be allowed to speak. Further research on this topic is being done by the Board.
- f. Those in opposition to the case shall be allowed to speak.
- g. The applicant and those in favor shall be allowed to speak in rebuttal.
- h. Those in opposition shall be allowed to speak in rebuttal.
- i. The Board of Adjustment will hear with interest 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.
- j. The Chairperson shall present a summary setting for the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.

## Rules of Procedure (cont.)

- k. The Board will close the public hearing and may choose to deliberate on the case immediately, later in the same meeting, or at a future meeting.
- l. The Board shall make a decision on the case within 30 days of the hearing.
- m. The Chairman shall call for the Clerk's report on the next case.

### **9: Public Notice**

- a. **Public Meetings** - subject to the provisions of RSA 91-A:3, public notice of public meetings shall be posted in 2 appropriate places, one of which may be the Town's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings.
- b. **Public Hearings** - subject to the provisions of RSA 676:7, public notice of public hearings shall be placed in a newspaper of general circulation in the area not less than 5 days before the date fixed for the hearing of the appeal. Such notice shall include the name of the applicant, description of property (to include the tax map identification number), action desired by the applicant, provision of the zoning ordinance concerned, the type of hearing being made, and the time and place of the hearing.
- c. **Personal Notice** – subject to the provisions of RSA 676:7, notice shall be made by certified mail, return receipt requested, to the appellant, every abutter and holder of conservation, preservation or agricultural preservation restrictions, not less than 5 days before the date fixed for the hearing of the appeal. Notice shall also be provided to the Planning Board, the Conservation Commission, the 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.

### **10: Reconsideration by the Board**

The Board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per 74 Cox Street LLC v. City of Nashua, September 21, 2007.

### **11. Records**

- a. The records of the Board shall be kept by the Clerk and made available for public inspection at the Springfield Town Offices in accordance with RSA 673:17.
- b. Final written decisions will be placed on file and available for public inspection within 144 hours after the decision is made in accordance with RSA 676:3.
- c. Minutes of all meetings including names of Board members, person appearing before the Board and a brief description of the subject matter shall be open to public inspection within 144 hours [RSA 676:3] or 5 business days [91-A:2 II], whichever is less, of the public meeting.
- d. The Clerk is authorized to make audio recordings of meetings of the Board for the use in the preparation of minutes. Any such recording shall be retained until after the Board's approval of the minutes of that meeting and until the expiration of any appeal period pertaining to any case that was considered at that meeting.

## Rules of Procedure (cont.)

### Section 5: Application/Decision - continued

**12: Rules of Conduct** The general rules of conduct at a public hearing shall be as follows:

- a. Members of the Board may ask questions at any point during testimony.
- b. Any member of the Board, through the Chairperson, may request any party to the case to speak a second time.
- c. 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.
- d. Any party to the case who wants to ask a question of another party to the case must do so through the Chairperson.
- e. Any person who wants the Board to compel the attendance of a witness shall present his request, in writing, to the chairperson not later than 3 days prior to the public hearing.
- f. The Board may vote at any time to continue a public hearing to a future meeting or to a later time in the same meeting.
- g. The role of the clerk in public hearings is limited to recording the proceedings. The clerk may, through the Chairperson, ask questions of any party for the purpose of clarifying the record. This paragraph does not apply to a Board member serving as acting clerk.

### Section 6: General

#### **1. Communications**

Communications outside of meetings are to be conducted in compliance with RSA 91-A:2-a. Board members may exchange or distribute procedural information outside of public meetings but may not enter into discussions or exchange opinions on applications before the Board.

#### **2. Joint Meetings and Hearings**

a. RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other "land use boards," at the discretion of the boards involved.

b. Joint business meetings with any other land-use board(s) may be held at any time when call jointly by the chairs of the boards involved.

c. A public hearing on any appeal to the Board of Adjustment will be held jointly with another board only under the following conditions:

1. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
2. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board chairperson shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment chairperson shall chair the joint hearing; and

3. The provisions covering the conduct of the public hearings, set forth in these rules, together with such additional provisions as may be require by the other board, shall be followed; and
4. The other board shall concur with these conditions.

**3. Waivers**

Any portion of these Rules of Procedure may be waived by a majority vote of the Board in such cases where ~~ren, in the opinion of the Board, when~~ strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

**Adopted:**

These Rules of Procedure of the Springfield Zoning Board of Adjustment were adopted on \_\_\_\_\_.

Attest: \_\_\_\_\_

Chairperson

**Revised:**

These Rules of Procedure of the Springfield Zoning Board of Adjustment were revised on \_\_\_\_\_.

Attest: \_\_\_\_\_

Chairperson

**Revised:**

These Rules of Procedure of the Springfield Zoning Board of Adjustment were revised on \_\_\_\_\_.

Attest: \_\_\_\_\_

Chairperson

