

WEARE ZONING BOARD OF ADJUSTMENT

ORGANIZATION AND RULES

1. OFFICERS; SECRETARY AND EMPLOYEES:

The Board of Zoning Appeals ("Zoning Board of Adjustment" or "Board") shall elect a chairman and vice chairman from its membership. The vice chairman shall have the power and authority to act as chairman during the absence or disability of the chairman. The chairman is responsible for the conduct and the decorum of the board meeting. The zoning board of adjustments is a quasi-judicial board. It shall conform to the organization and rules. Everyone present at the meeting shall be treated with courtesy, dignity, and respect. The chairman shall keep the meeting in proper order.

The Land Use Office shall be the board's secretary and is responsible for the recording, generation and providing draft minutes to the board and updating draft minutes and the proper record retention.

On the first meeting following the Town's annual meeting, the Board shall elect chairman and vice chairman officers for the coming year.

2. HEARINGS:

- 2.1. The Board shall hold a hearing on each application for Variance, Appeal of Administrative Decision, Special Exception and/or Equitable Waiver of Dimensional Requirement. The maximum number of applications to be heard in one month is at the board's discretion.
- 2.2. Regular meetings shall be held on the first Tuesday of each month, for all applications which have been fully completed and delivered to the Building Inspector's office with the required filing fee (set by the Land Use Office), on or before the second Monday of each month.
- 2.3. Any maps, plans, or documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing during normal business hours in the office of the Building Inspector. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed plans and documents.
- 2.4. Conduct of the Hearing: The conduct of the hearing shall be governed by the following rules:
 - 2.4.1. The Chairman shall call the hearing to order.
 - 2.4.2. The Chairman shall explain an overview of the procedure, to be followed.

- 2.4.3. The Chairman shall determine the order which the case applications shall be heard.
- 2.4.4. The Chairman shall seat and identify the 5 members to hear the specific case. Full members have priority and if necessary, alternate members are selected to fill the 5 seats at the Chairman's discretion.
- 2.4.5. The Chairman shall summarize the case application.
- 2.4.6. The board will determine whether the application is complete. Incomplete applications will not be heard by the Board. Chairman shall request a motion in the affirmative to accept the case application, as complete, followed by a second and a three "yes" votes are required for the case to be heard. During the hearing of the case application, if the information is not sufficient to continue, the Chairman will request the necessary information from the applicant, which may require the case to be continued and rescheduled to a future date.
- 2.4.7. Each speaker shall identify themselves by stating their full name and address.
- 2.4.8. The applicant or their representative shall present their reasons for the case.
- 2.4.9. Those in favor of the case shall be allowed to speak.
- 2.4.10. Those in opposition to the case shall be allowed to speak.
- 2.4.11. The public at large will be allowed to speak.
- 2.4.12. Other town boards will be allowed to speak.
- 2.4.13. The applicant shall be allowed to speak in rebuttal.
- 2.4.14. Those in favor of the appeal shall be allowed to speak in rebuttal.
- 2.4.15. Those in opposition to the case shall be allowed to speak in rebuttal.
- 2.4.16. Those public at large shall be able to speak in rebuttal.
- 2.4.17. Those other town boards shall be able to speak in rebuttal.
- 2.4.18. The Chairman, in their discretion, shall limit the time of any speaker, either for or against the case.

- 2.4.19. Each member of the seated Board members of the case may ask questions at any point in the hearing.
- 2.4.20. Any party to the hearing who desires to ask a question of another party to the hearing must obtain permission of the Chairman to do so.
- 2.4.21. Whenever the Board exercises its regulatory or quasi-judicial powers, it may, at its sole discretion, compel the attendance of the witnesses. All expenses incurred under this section for compelling the attendance of a witness shall be paid by the party or parties requesting that witness to be compelled to attend.
- 2.4.22. The Chairman shall call the public hearing to a close. The Chairman shall request a motion in the affirmative to approve the case, request and receive a second, request a discussion for or against the case and any condition for the case approval or reasons for denial of the case.
- 2.4.23. Note: administrative appeal, equitable waiver of dimensional requirement, special exception shall require at least three “yes” votes to approve the case. For variance cases, each of the 5 prongs of the variance will be considered and motioned separately with at least three “yes” vote for each of the 5 variance prongs to approve the variance case. The chairman shall pole each of the seated members for their vote.
- 2.4.24. If there is another case pending, go back to step 2.4.4 and start the application process, else go to step 2.4.25.
- 2.4.25. The chairman will ask for a motion in the affirmative to approve the any meeting(s) minutes, request and receive a second, ask for discussion and make any changes necessary, call the vote. Three “yes” votes are required to accept the minutes.
- 2.4.26. If no other business is before the board, request a motion to adjournment, request and receive a second, request discussion and call the vote. Three “yes” votes are required to adjourn the meeting.
- 2.4.27. Should the seated board members find it necessary to perform a “site walk” to gather more information, the chairman shall request a motion in the affirmative for a case meeting continuation and a “site walk”, request and receive a second, open discussion and at least three “yes” votes are required to set up a site walk. The land use office shall appropriately post the notice and schedule the site walk with the owner of the property. The site walk is intended to view the circumstances of the property and not used as a continuation or extension of the board meeting.

- 2.5. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial, or unduly repetitious evidence.
- 2.6. The Board shall not provide for the verbatim recording of the proceedings but shall allow any interested party to do so, by either stenographer, mechanical, or electronic means.
- 2.7. Each decision on any application shall be reduced to writing as provided in this subsection and shall include findings of facts and conclusions based thereon.
- 2.8. The Board shall issue a final written decision which either approves or disapproves an application. If the application is approved, any conditions shall be included. If the application is not approved, the Board shall provide the applicant with written reasons for disapproval.
- 2.9. Whenever the Board issues a decision, a copy of the decision shall be mailed by the land use office within seventy-two (72) hours of the date of the decision to the applicant, or if represented, then to their attorney, without separate charge. A copy of said decision shall be filed in the Land Use Office.
- 2.10. Request for rehearing shall be handled in the following manner: The person(s) requesting a rehearing shall submit, within thirty (30) days of the final decision, in writing to the Code Enforcement Officer, a request for rehearing with the reason(s) and relevant date for the Board's consideration. The Code Enforcement Officer will mail the request for rehearing reason(s) and relevant data to each Board Member. If at all possible, the Board members who were voting members on the original hearing shall decide at the next scheduled board meeting whether a rehearing is warranted or not based on the information supplied and respond to the Chairman of the Board with their decision. A quorum is required to grant a rehearing. If the board deems it necessary for town counsel to review the rehearing request with the original case application, case minutes and decision notice documents to determine if the board acted appropriately and a rehearing decision is appropriate for the board to render a decision. The Code Enforcement Officer will respond to the applicant within ten (10) days of receipt of the request for the Board's decision for a rehearing. Upon granting the request for rehearing, the person(s) requesting the rehearing will then apply in the same manner as a regular hearing. The Board will acknowledge the request for rehearing at the next meeting to officially record the Board's request for rehearing decision in the minutes.
- 2.11. Joint hearings between the Planning Board and the Zoning Board of Adjustment shall be allowed and conducted as per RSA 676:2.

3. MEETINGS:

- 3.1. Regular meetings of the Board shall be held unless canceled for lack of applications to process or board members. The Board may provide for special meetings, at the call of the Chairman, or on the request of any two of its members, which shall be held on notice to its members and the public in accordance with State Statutes, the Zoning Ordinance, and these Rules. No action shall be taken except by a majority vote of the members of the Board present and voting at the meeting. Nothing herein shall be construed to contravene any act providing for procedures for governing bodies.
- 3.2. All meetings of the board shall be held in compliance with RSA 91-A.
- 3.3. Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney, action taken by the Board, the findings, if any, made by it and reasons, therefore. The minutes shall, thereafter, be made available for public inspection during normal business hours at the office of the Code Enforcement Officer. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for their use.
- 3.4. The Board shall consist of five (5) members. The presence of three (3) members shall constitute a quorum. The Board shall act by resolution. The concurring vote of three (3) members of such Board shall be necessary to reverse any order, requirements, decision, or determination of the Code Enforcement Officer, or to decide in favor of the applicant any matter upon which it is required to pass under this chapter, or to grant any variation from the requirements, of this chapter. An applicant is entitled to have all five members of the Board to hear the application. However, the applicant may choose to waive the requirement of having the full Board hear his/her application.

4. GENERAL PROCEDURE AND CONDITIONS:

- 4.1. The Board shall adopt and file in the Code Enforcement Officer's office such amendments to these rules of procedure as it may deem necessary for the proper exercise of its responsibilities.
- 4.2. Prior to acting on any Variance, Special Exception, Appeal from Administrative Decision or Equitable Waiver of Dimensional Requirement, the Board shall hold a public hearing after public notice as required by State Statute.
- 4.3. All matters which are the subject of a mandatory referral or notice to other agencies as set forth in the enabling statutes shall be transmitted to the appropriate agencies by the Secretary of the Board in accordance with the provisions of those subsections.

- 4.4. The land use office shall keep minutes of the Board's proceedings showing the vote of each member on every question or if absent or failing to vote, indicating such fact. Each decision of the Board with respect to the approval of a Special Exception or Variance or Administrative Appeal or Equitable Waiver of Dimensional Requirement shall be so stated and documented as to provide a definitive authorization to the Code Enforcement Officer for issuing a building permit or certificate of occupancy.

5. NOTICE:

- 5.1. Public notice shall be given of all hearings and all hearings shall be open to the public.
- 5.2. Due notice of all hearings shall be given to the Code Enforcement Officer, the Selectmen and such other parties as may be necessary.
- 5.3. The Board shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, but not more than thirty (30) days after filing such application. Notice of any hearing before the Board shall be published in a newspaper of general circulation in the Town not less than five (5) days before the date fixed for the hearing of the appeal. The preparation and cost of publication and mailing of any such notice shall be at the cost and expense of the applicant.
- 5.4. Notice of any hearing shall be sent by certified mail "return receipt requested" to all abutting property owners of the subject property, to all property owners within a distance of one hundred (100) feet of the subject property on both sides of the street on which the property fronts, and the adjoining property owner or owners to the side and rear of the property affected immediately adjacent extending one hundred (100) feet therefrom. In addition, the Board shall give any other notice required by law, including notice to all others who can demonstrate that they will be affected directly by the proposed application, if granted or denied.
- 5.5. Upon the written request of an applicant, the Code Enforcement Officer shall, within seven (7) days, certify applicant's list from said current tax map duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to subsection b of this section. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding. Application Fee: \$50.00 plus \$10.00 per abutter.

6. RULES FOR THE GRANTING OF VARIANCES AND SPECIAL EXCEPTIONS:

- 6.1. Requests for uses or changes in the use of a parcel or lot of land, or building thereon, not otherwise permitted (i.e. not a "permitted use") shall be filed as requests for variances under Article 6, Section 6.1.5 of the Weare Zoning

Ordinance, and the applicant shall present evidence on each of the following five (5) criteria as required by NH RSA 674:33.

- 6.2. Request for Special Exceptions shall comply with requirements set forth in the Weare Zoning Ordinance, Article 6, Section 6.1.4.

7. APPLICATION PROCESS:

- 7.1. The applicant must use the approved application form and must provide the following additional information:
- 7.2. Location map showing street names, North orientation arrow, abutting properties, wetlands, slope characteristics, etc.
- 7.3. Plot plan of property at issue indicating any current structures, location of proposed structures, location of well and septic systems, and define setbacks. Surveyed plans are preferred, but well drawn, in scale non-professional drawings may be acceptable.
- 7.4. All information required must be complete, clear, and easily readable (typewritten is preferred).

8. EFFECTIVE DATE:

- 8.1. These Rules, or any amendments, shall become effective immediately after voting and adopting at a regular meeting approving the same, and upon the filing a copy of these Rules with the Town Clerk and Code Enforcement Officer.

Revision Dates:

Original: February 1989
Amended: November 5, 2002
Amended: May 7, 2024