



TOWN OF EFFINGHAM

ZONING BOARD OF ADJUSTMENT

RULES OF PROCEDURE

**Town of Effingham
Zoning Board of Adjustment
RULES OF PROCEDURE (ROP)**

AUTHORITY

1. These rules of procedure are adopted under the authority of New Hampshire **Revised Statutes Annotated**, Chapter **676:1** and the zoning ordinances, maps, and overlays of the Town of Effingham.

OFFICERS

1. A **chairman** shall be elected annually by a majority vote of the Board in the month of April. The chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix their signature in the name of the Board.

2. A **vice-chairman** shall be elected annually by a majority vote of the Board in the month of April. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters which come before the Board during the absence of the chairman.

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 serve for one year and shall be eligible for re-election.

MEMBERS AND ALTERNATES

1. **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 chairman as soon as possible. Members shall participate in the decision making process and vote to approve or disapprove all motions under consideration.

2. **Attendance** requirement of elected Board members and alternate members.

- a) Should a member be absent without excuse from 25% of the meetings in a year, the Board shall vote to see if the member should be officially requested to review their ability to perform duties for the rest of the term.
- b) Should a member be absent without excuse from 50% of the meetings in a year, the Board shall vote to see if said member should resign from the Board. If the vote is in the affirmative, the Board shall stipulate its findings in writing. If member should refuse to resign after an affirmative vote by the Board and written findings, action will be taken per **RSA 673:13**.

3. Alternates

- a) Up to **five alternate members** shall be appointed, as provided by the local legislative body, and shall 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, as per **RSA 673:6**.
- b) Upon approval by the Chairman, an alternate(s) may participate in meetings and hearings as a non-voting member(s) with full privileges other than presenting motions.
- c) The Chairman shall grant standing to alternates whenever a regular member is absent or excuses themselves from a hearing per **RSA 673:11**.
- d) In the event a regular member arrives late at a Public Hearing, the alternate standing in for that member will step down, provided significant testimony has not yet been received (as determined by the chair). Otherwise the alternate will continue to sit for that member.

MEETINGS

1. **Regular meetings** shall be held at the Effingham Town Offices at 7:00 P.M. on the first Wednesday of each month. Other meetings may be held on call by the chairman provided public notice and notice to each member is given at least 24 hours excluding Sundays and legal holidays prior to such meetings per **RSA 91-A:2**.

2. **Quorum.** A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members.

- a) **RSA 674:33, III** provides that "...the concurring vote of 3 members of the Board shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal..." 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.
- b) If any regular Board member is absent from any meeting or hearing, or disqualifies themselves from sitting on a particular case, the chairman 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 themselves from sitting on a particular case, as provided in **RSA 673:14**, they shall notify the chairman as soon as possible so that an alternate may be appointed to sit in their 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, or a person with standing in the application 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.

The disqualification shall be announced by either the chairman or the member disqualifying themselves before the beginning of the public hearing. The disqualified member shall absent themselves from the Board table during the public hearing and during all deliberation on the case.

If a disqualified member would have standing as a member of the public they may speak as a member of the public. If member would not have standing as a member of the public they will not be allowed to speak. Standing shall be determined by the chairman.

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

- a. Call to order by chairman
- b. Conduct roll call
- c. Review minutes of previous meeting
- d. Communications and miscellaneous
- e. Public hearing
- f. Old business
- g. New Business
- h. Other business before the Board
- i. Adjournment

APPLICATION/DECISION

1. Applications.

- a) Each application for a hearing or appeal before the Board shall be made on forms provided by the Board and shall be presented to the Zoning Board of Adjustment. The Select Board office clerk shall stamp and record the date of receipt.
- b) Appeals from an administrative decision taken under **RSA 676:5** shall be filed within 65 calendar days of the decision.
- c) Motions for reconsideration from a decision of the Zoning Board of Adjustment shall be filed within 30 calendar days of the decision. **RSA 676:5.**
- d) The Select Board office clerk shall place the application in the designated Zoning Board of Adjustment mailbox and notify the Board chair.
- e) A public hearing must take place within 30 days from the date of receipt. **RSA 676:7, II.** If able to meet the 30 day time limit (10 days or MORE to post prior to the hearing) the Board shall convene a meeting to vote to accept a complete application and schedule a public hearing. If unable to meet the 30 day time limit (10 days or LESS to post prior to the hearing) the Board shall schedule a public hearing to vote to accept a complete application and proceed directly into the case if approved.

Incomplete forms will be returned to the applicant with the reason for rejection.

Note: If applicant desires a meeting later than 30 days, a waiver from the 30 day requirement must be submitted to the Board.

2. Public Notice.

- a) Public notice of public hearings on each application shall be given in a newspaper with general circulation in the Town and shall be posted in two appropriate places of which one may be the Town website, the Town Offices and/or the Effingham Library not less than five days (5), excluding Sundays, and holidays, before the date fixed for the hearing. Notice shall include the name and address 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. **RSA 675:7.**
- b) Personal notice shall be made by certified mail to the applicant and all abutters not less than 5 days, excluding Sundays, and holidays, before the date of the hearing. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
- c) Costs of all required notices must be paid for, in advance, by the applicant.
- d) Additional notice(s), made by certified mail to other parties, deemed by the Board to have special interest may be required. Said notice(s) shall contain the same information as the public notice and shall be made on forms provided for this purpose. Costs of all additional notices must be paid for by the applicant, prior to setting a hearing date.

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

- a) The Chairman shall call the hearing in session and state the rules of procedure for the hearing.
 - 1. Members of the Board may ask questions at any point during testimony, through the Chairman.
 - 2. Each person who appears shall be required to state their name and address and indicate whether they are a party to the case or an agent or an abutter or counsel.
 - 3. Any member of the Board, through the Chairman, may request any party to the case to speak for further testimony or clarification.
 - 4. Any party to the case who wants to ask a question of another party to the case must do so through the Chairman.

5. The Zoning 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.
- b) The Chairman shall ask for the clerk's/designated member report on the first case. The clerk/designated member shall read the application and report on how public notice and personal notice were given.
 1. The applicant, agent for or attorney for the applicant must attend the hearing or the application will be considered withdrawn and all cost forfeited.
 2. The applicant or their representative shall be called to present the appeal.
 3. Those appearing in favor of the appeal shall be allowed to speak.
 4. Those in opposition to the appeal shall be allowed to speak.
 5. The applicant and those in favor shall be allowed to speak in rebuttal.
 6. Those in opposition to the appeal shall be allowed to speak in rebuttal.
 7. Any person who wants the Board to compel the attendance of a witness shall present his request in writing to the chairman not later than 3 days prior to the public hearing.
 8. Prior to closing of public input, the chairman shall/may present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.
 9. The public input portion of the hearing on the appeal shall be declared closed. The public shall be informed the deliberation is an open public meeting but no public input will be allowed.
 10. The Zoning Board of Adjustment will go into deliberation.

NOTE: If additional input from the public is desired or needed the Chair shall re-open the **Public Hearing** using the rules on page 5.

11. For a variance the chair at any time may call for a non-binding straw vote of the five (5) criteria of RSA 674:33, I-b. For an equitable waiver of dimensional requirements the chair at any time may call for a non-binding straw vote of the four (4) criteria of RSA 674:33,a-I. For a special exception the chair at any time may call for a non-binding straw vote of the requirements of RSA 674:33 IV & local ordinance Article 9.

4. **Decisions.**

1. A Draft motion (with conditions if needed) shall be developed by the Board and put forward as a formal motion once the majority of Board members agree on the draft. The exact motion shall be copied into the minutes verbatim.
2. The Board shall take one all-encompassing (of all the criteria used) vote to either approve or deny the application. The 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. RSA 674:33, III.
3. The Zoning Board of Adjustment shall decide all cases within 30 days from the conclusion of the deliberation. The Board will approve, approve with conditions or deny the appeal. Notice of the decision will be made available for public inspection within 5 business days of the vote, as required by **RSA 676:3** and will be sent to the applicant and shall be posted in two appropriate places of which one may be the Local newspaper, Town website, the Town Offices and/or the Effingham Library. Notice may also be given to other parties deemed by the Board to have special interest. If the appeal is denied the notice shall include the reasons therefore.

RECORDS

1. The records of the Board shall be kept by the clerk and made available for public inspection at the Town Offices 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 after the public meeting. **RSA 91-A:2**.
4. Standard Forms may be developed and adopted by a majority vote of the Board under RSA 676:1 and shall become part of these rules of procedure. Forms shall be uploaded to the ZBA computer for official usage and an electronic back-up copy shall be placed in the ZBA files at the town offices. Prior to usage all forms shall be cross referenced to the ROP.

AMENDMENTS

These rules of procedure may be amended by a majority vote of the members of the Board.
RSA 676:1.

JOINT MEETINGS AND HEARINGS

1. **RSA 676:2** provides that the Zoning Board of Adjustment may hold joint meetings or hearings with other "land use Boards", including the Planning Board, the Historic District Commission, Enforcement Officers, the Agricultural Commission and the Conservation Commission. 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 chairman of the two Boards.
3. A public hearing on any appeal to the Zoning 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 Chairman shall chair the joint hearing. If the other Board is not the Planning Board, then the Zoning Board of Adjustment Chairman 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.