
Board of Adjustment By-Laws

BOARD OF ADJUSTMENT
TOWN OF JACKSON, NEW HAMPSHIRE
BY-LAWS
Last Amended February 17, 2010

AUTHORITY:

These by-laws are adopted under the authority of the New Hampshire Revised Statutes Annotated, 672-677 and subsequent amendments, and the Zoning Ordinance of the Town of Jackson. Reference: Board of Adjustment in New Hampshire, a Handbook for Local Officials

Purpose: The primary role of the Board of Adjustment is to interpret the terms of the Zoning Ordinance as enacted by the Town. It seeks to interpret the intent of the Zoning Ordinance representing the public interests of the Town, while at the same time protecting individual property owners from unfairness and hardship in the application of zoning regulations. The legislative body, (i.e. those voting on the day of Town Meeting) in passing the Ordinance has already decided what zoning controls it believes to be best for the Town and has determined what restrictions will be applied. The Board should act within the limits set by the Ordinance and cannot enlarge, restrict or disregard these limits. In determining the intent and meaning of a provision of the Ordinance, the Board is restricted to a fairly literal interpretation. The Board should apply the strict letter of the law in exactly the same way that a building inspector is required to do. It cannot alter the Ordinance or waive any restrictions under the guise of interpreting the law. The Board cannot declare an Ordinance invalid because it appears to be improperly drawn or enacted, or violates state or federal law. It should assume that the Ordinance is legal and constitutional unless declared otherwise by a court. The Board should act on the evidence presented and base its decision on legal grounds according to very strict guidelines outlined in state manuals and as determined by case law. The Board should be diligent in confirming the accuracy of all written and verbal evidence, whether from the applicant or fellow Board members and, where necessary, postpone a decision in order to do so. The Board will not deny or approve an application based on what it considers to be the best interests of the Town because it does not have legislative powers.

1. BOARD:

1.1. This Board is established under RSA 673: 1

1.2. The Board shall consist of 5 members appointed by the Board of Selectmen for a three (3) year term. (RSA 673:3 and RSA 673:5)

1.3. Alternate members (maximum of five - 5) may be appointed by the Board of Selectmen for a three (3) year term. (RSA 673:6) All references below to the "Board" shall include duly appointed alternate members unless otherwise noted.

1.4. The terms he, man or men refer to male/female, as applicable.

2. OFFICERS:

2.1 Chairman -A Chairman shall be elected annually at the annual meeting by a majority vote of the Board for a term of one (1) year. He shall preside over meetings and public hearings, may administer oaths, appoint such committees as directed by the Board, shall affix his signature in the name of the Board, and shall be spokesman for the Board. (RSA 673:9)

2.2 Vice Chairman - A Vice-Chairman shall be elected annually at the annual meeting by a majority vote of the Board. He shall preside in the absence of the Chairman and shall have full powers of the Chairman on matters which come before the Board during the absence of the Chairman. He shall serve for a term of one (1) year and shall be eligible for re-election. In the normal course of events, he should receive consideration for election to the office of Chairman when that office becomes vacant for whatever reason. (RSA 673: 9)

2.3 Clerk - A Clerk may be elected annually at the annual meeting by a majority vote of the Board. He shall serve for one (1) year and shall be eligible for re-election. He shall maintain a record of all hearings, meetings, transactions and findings of the Board, and perform such other duties in conjunction with the Chairman and/or Vice-Chairman as appropriate. (RSA 673: 9)

2.4 Officer Vacancies - In the event that an officer cannot complete his term, the Board shall meet to elect a new officer to fill the term until the next election of officer at the Annual Meeting. Any election of Chairman to complete a vacant term shall not be counted in determining an aggregate of 3 consecutive years at discussed under section 2.1. above.

3. MEETINGS :

3.1. Monthly - The Board shall meet on the third (3rd) Wednesday of each month, unless otherwise indicated by the Chairman. At this time, the Board may conduct

any Public Hearings as necessary, following all proper notification procedures required by NH regulations. When Public Hearings are to be held, the Chairman shall provide each Board member with a copy of the appeal, the names of the abutters, and any other necessary information, as soon as possible after the filing of the application.

3.2 Other Business - At each monthly meeting, the Board may discuss business issues such as updates to By-Laws, application forms and procedures. In addition, the Board may meet for the purposes of training, sharing information and discussion of general zoning issues or recent court decisions.

3.3 Annual Meeting -The annual meeting of the Board shall be held on the third (3rd) Wednesday in January.

3.4 Notice Requirements - As required by RSA 91-A:2, a notice of time and place of all meetings, including a non-public session, shall be posted in 2 places, or shall be printed in the newspaper at least 24 hours, excluding Sundays and legal holidays, prior to any meeting. The only exception are cases of emergency as defined in RSA 91-A:2.

4. QUORUM:

4.1 Three (3) members will constitute a quorum. (RSA 673:10)

4.2 In the absence of a regular member, or the disqualification of a member to sit on a particular matter, the Chairman shall designate an alternate member in order to reach the maximum number of permitted votes, which is five (5). An alternate who is activated to fill the seat of an absent or recused member becomes a full member of the Board for as long as they are activated and can participate in all aspects of the process. (RSA 673:11) However, once the Board closes the public hearing and begins deliberations, any inactivated alternates must step away from the Board while the Board deliberates. Alternates shall be chosen by rotation based on seniority. The alternate so designated shall have all the powers and duties of a regular member in regard to the appeal or appeals under consideration. (RSA 673:11)

Alternates may not be designated to act in the event of a Board vacancy but may be appointed by the Selectmen to fill that vacancy.(RSA 673:11)

4.3 In the event that the Board has in attendance fewer than five (5) regular and/or alternate members, but has at least three to constitute a quorum, the Chairman shall ask the applicant, on the record, whether or not he wants to proceed after being

advised that at least three (3) members must concur in the decision on his application. If the applicant does not want to proceed, the Board shall announce a new date within a reasonable time, for hearing the application with five (5) members present.

5. ORDER OF BUSINESS AT THE ANNUAL MEETING:

5.1. Roll call by the Clerk.

5.2 Reading of the minutes of the last meeting.

5.3 Any old or new business exclusive of the hearing of appeals.

6. STRUCTURE OF PUBLIC HEARINGS:

6.1. Call to Order -The Chairman shall call the meeting to order, ask the Clerk to call the roll and call for the Clerk's report of the case.

6.2. Application and Notice -The Clerk or Chairman shall read the application and report on the manner in which the notice was given as required by statute.

6.3 The order of speakers shall be as follows:

The applicant and those in favor

Those in opposition

Rebuttal by applicant and those in favor

Rebuttal by those in opposition

6.4 Chairman's Summary -The Chairman shall 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.

6.5 Continuance - The Board may vote to continue the Public Hearing at a later date if it decides that additional deliberation, information or evidence is necessary, or for any other good cause. Or, the Board may close the Public Hearing and begin deliberations but postpone the actual vote until a later date. If the Board cannot conclude the proceedings within the timeframe available, it may vote to continue the hearing to a specific time, place, and date with no additional notice required so long as they make the formal announcement before voting. The Board will decide all cases within 30 calendar days from the date of the Public Hearing.

6.6 Opinion of Counsel - The Board may vote to continue a hearing in order to meet with or request an opinion from the Board's counsel before deciding a particular case. All communication with the Board's counsel shall be made through

the Chairman unless counsel is present at a Public Hearing or at a closed meeting for purposed of attorney-client communication. Upon receipt of a written opinion, the Chairman shall mark it "Confidential" and provide copies to each Board member for review prior to the next scheduled meeting on the matter.

6.7 Announcement of Decision -After a decision is voted on and announced it must be published within 5 business days by posting as required by RSA 676:3. If an appeal is denied, the reasons must also be indicated.

6.8 Posting of Minutes - Minutes in draft form of each public hearing and Board of Adjustment meeting will also be posted within 5 business days, in the Town Office, the Post Office and in addition using any such other method as approved by the Chairman. A copy will be sent to each Board member and to the appellant. Minutes will include the vote of each Board member, the posting date, and will be marked DRAFT or UNOFFICIAL COPY – all comments and changes should be sent in writing to Chairman, Jackson Board of Adjustment, PO Box 268, Jackson, NH within 7 days of the posting date for consideration by the Board.

6.9 Approval of the Minutes -The Chairman will be responsible for circulating a second draft including all changes and for finalizing the minutes. Any changes should be clearly indicated and dated. The Board will vote on the amended minutes at the next scheduled meeting. A final approved copy of the minutes marked Approved with the date of approval indicated, will then become part of the public record for that case.

7. GENERAL RULES OF PUBLIC HEARINGS:

7.1 Questions from the Board - Members of the Board may ask questions at any point during testimony.

7.2 Request for Attendance of Parties to the Case -Any member of the Board, through the Chairman, may request any party to the case to reappear.

7.3 Speaker Identification - 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 for a party to the case.

7.4 Public Input through Chairman - Any party to the case who desires to ask a question of another party to the case, or any person speaking in favor or in opposition to the appeal, desiring to ask a question of any other person who has spoken of matters germane and relevant to the pending case, shall do so only through the Chairman.

7.5 Request for Witnesses - Any person who desires the Board to compel the attendance of a witness shall present his request in writing to the Chairman not later

than ten (10) days prior to the public hearing date, exclusive of the day of the public hearing. (RSA 673:15)

8 . Executive Sessions:

8.1 Authority - The Board of Adjustment, in compliance with RSA 91-A, cannot make its decision in executive session. Only actions taken by the Board when convened in open meetings have the status of official determinations and are legal. Executive sessions may be held for deliberation only, and only for those reasons outlined in RSA 91-A:3, II which is attached and made part of these By-Laws.)

8.2 Procedures -The following procedures are applicable in order to go into executive session:

8.2.1 The Board must have a properly noticed public meeting (it need not be the same day as the nonpublic session).

8.2.2 A motion to have a nonpublic session must be made and seconded, stating which specific exemption is relied upon.

8.2.3 A roll call vote must be taken, with a majority of those Board members present voting yes. Only matters specified in the motion can be discussed in the nonpublic session.

9. APPEALS:

9.1 Application Forms - Each application for an appeal shall be made on forms as provided by the Board and shall be presented to the Chairman who shall record the date of receipt over his signature.

9.2 Amendments to Application - Applications may be amended at the discretion of the Board when a correction is needed or deficiency notes in the application, at the time of the Public Hearing. Matters of form may be amended at the time of hearing, without resolution of the Board, However, changes to substantive deficiencies of an application can only be allowed by a majority vote of the Board. Should correction to a substantive deficiency not be allowed amendment at the time of the hearing, the Board may vote to continue the hearing to the next scheduled regular meeting.

9.3 Time Limit for Filing Appeals to the Board of Adjustment - Appeals from Administrative Decisions pursuant to RSA 676:5 which includes appeals of certain Planning Board decisions, may be filed no later than 30 calendar days from the day following the date of the decision. The 30-day time limit applies only to those situations where anyone having a right to appeal feels that a decision interpreting

the Zoning Ordinance, made by the Board of Selectmen, Planning Board, or other administrative officer is incorrect, and he wishes to appeal that administrative decision. While a variance may also be requested at the same time as an appeal, there is no time limit for applying for a variance. The Board, by a majority vote, may waive this period if the person appealing can demonstrate to the Board's satisfaction that he did not know, and could not reasonably have known, that the decision had been made. (Tausanovitch v. Town of Lyme, 143, NH144 (1998)).

9.4 Public Hearing Date - A Public Hearing by the Board on any administrative decision or requirement shall be heard within thirty (30) days of the date of receipt of an approved application, unless otherwise agreed to by applicant. (RSA 676:7)

9.5 Fees and Expenses –At the time the application for appeal is filed, the appellant shall submit with the application, the appropriate fee, payable to the Town of Jackson, to cover the expenses incident upon preparation of said appeal. Should this fee not be sufficient to cover the statutory costs to be borne by the appellant, the appellant will, upon notification by the Chairman of the details of the additional amount required, pay such amount to the Town of Jackson, through the Board, prior to the hearing.

9.5.1 The following fees shall be submitted with each application:

9.5.2 Where there are fewer than ten (10) abutters \$75.00;

9.5.3 Where there are more than ten (10) abutters \$75.00 plus the cost of mailing the required notice to the abutters;

9.5.4 Where applicable, any fees as discussed in Section 16.3 entitled RIVER CONSERVATION DISTRICT – DISPUTED BOUNDARIES.

9.6 Expert Services -Where expert services are required by the Board of Adjustment in areas of fire, water and sewage, environmental concerns or the like to enable the Board to make an informed decision, an expert or experts may be selected and consulted at the sole discretion of the Board. The Chairman will advise each applicant of the estimated cost involved and the amount of deposit required prior to the hearing. A final invoice indicating the cost of such expert consultation must be paid by the appellant in each case.

9.7 Abutters

9.7.1 Abutter List -The appellant shall provide to the Board a complete list of the names and addresses of all abutters as defined by RSA 672: 3. In the case of an abutting property being under condominium or other collective form of ownership, the term abutter means the officers of the collective or association.

9.7.2 Abutter Notice -The list of abutters must accompany the application so that all abutters can be properly notified. Notice shall be by certified mail stating the date, time and place, and reason for the Hearing. Such notice shall be given not less than 5 days before the date fixed for the Hearing of the appeal. (RSA 676:7) An application submitted without the list shall be deemed incomplete and no action shall be taken on it. Notice will be provided to any holders of historical, agricultural or conservation easements on the subject property, but we will not attempt to notify holders of easements on an abutter's property.

9.7.3 Accuracy of Abutter List - It is the obligation of the applicant to provide a full and complete list of the abutters. The Board will not make any independent examination of the list and will rely on the list in giving notice for any hearings. The risk of failing to provide a full and complete list shall be on the appellant.

9.8 Application Completeness - The Board shall reject any petition/application not properly or completely filled out. An application for appeal shall not be considered as filed with or received by the Board unless it is accompanied by the required fee. The date, time and place of the Hearing shall be set upon receipt of a properly completed application and fee. A petition accepted for filing by the Board must be scheduled for hearing within thirty (30) days after such filing. (RSA 676:7)

9.9 Notification of Decision - Written notification of the decision will be made on the forms provided by the Board and shall be sent to the applicant, such municipal boards, commissions and officials as may seem appropriate in individual cases and shall be posted in two (2) places within the Town of Jackson (i.e. the Town Offices and the Post Office) and filed in the records of the Board. (RSA676:3)

9.10 Town Office Records - The Town Office staff shall be furnished with a copy of the application, the notice of the hearing, notices of abutters, the notice of decision, rehearing, or any judicial determinations.

9.11 Evidence for Public Hearings

Any information supplied by the applicant or his representatives for consideration by the Board, must be provided to the Board no less than 7 calendar days prior to the public hearing so that it can be made part of the public file and can be forwarded to individual Board members no later than 72 hours prior to the public hearing. This allows all interested parties and Board of Adjustment members, time to research and investigate all new information prior to the public hearing and prior to making a decision on the case. However, the Board reserves the right to waive this

requirement if it determines that the information submitted does not significantly alter the substantive issue of the case.

10. REQUEST FOR REHEARINGS:

10.1 Time Limit for Rehearing Request -Within 30 days after any order or decision of the Board of Adjustment, the Board of Selectmen or any party to the action or any party directly affected thereby may apply for a rehearing. The 30-day time period shall be counted in calendar days beginning with the date following the date on which the Board of Adjustment voted on its action. (RSA 677:2) However, if it can be shown that the written decision was not filed within 5 business day of the vote, the person applying for the motion for rehearing shall have the right to amend the motion within 30 days after the date on which the written decision was actually filed.

10.2 Time Limit for Board Response - The Board must decide to grant or deny the rehearing within 30 days of receipt of the completed request. (RSA 677:3) Any person aggrieved by any order or decision of the Board of Adjustment may apply to the Superior Court within 30 days after the date upon which the Board of Adjustment voted to deny the motion for rehearing. (RSA 677:4)

10.3 Time Limit for Filing Court Appeal - Any person aggrieved by any order or decision of the Board of Adjustment may apply to the Superior Court within 30 days after the date upon which the Board of Adjustment voted to deny the motion for rehearing (RSA 677:4)

11. RECONSIDERATION OF BOARD'S DECISION -

The Board may vote to reconsider an earlier decision if it feels an error has been made provided, it is done within the statutory 30-day appeal period of the original decision.

The motion for reconsideration must be made by a person who voted in the majority on the issue.

12 CONFLICTS OF INTEREST:

In conformance with RSA 673:14 any member of the board who has a direct personal or financial interest in an appeal brought before the board should excuse himself from participation in that hearing.

13. PUBLIC RECORDS:

13.1 The Board of Adjustment public records are filed at the Jackson Town Office building and shall include all information as required under RSA 91-A. One copy of any application, including all supporting documentation, will remain in the Jackson Town Office and be available for inspection by Board of Adjustment members and the public for at least 3 days prior to the date of any public hearing.

13.2 Information and documents distributed to a quorum of the Board or discussed at a public hearing must be made part of the public record unless specifically excluded under RSA 91-A.

13.3 By statute, written legal advice is exempt from the public record. In addition, Board of Adjustment work drafts are exempt from the public record, provided they are not circulated to a quorum of the Board. Confidential or commercial information is also exempt, if its release would be an invasion of privacy (RSA 91-A:5, IV)

14. FORMS:

All forms and revisions thereof shall be adopted by resolution of the Board and shall become a part of these By-Laws. All application forms and other forms for use during Public Hearings must be updated as soon as possible so that information requested from applicants is consistent with New Hampshire law and Jackson Zoning regulations.

15. PUBLIC NOTICE:

15.1 In addition to notification of abutters, notice of Public Hearings on each appeal shall be given in a local newspaper, and shall be posted at the Town Offices and the Post Office in the Town of Jackson not less than five (5) days (excluding the day of posting and the day of Hearing) prior to the date set for such hearing. Such notice shall include the name of the appellant, description of the property, action desired by the appellant, provision of the zoning ordinance concerned, the type of appeal being made and the date, time and place of the hearing. (RSA 676:7)

15.2 Service of the appellant and abutters shall be made by certified mail in compliance with RSA 676:7. Such notice shall contain the details set forth supra.

16. AMENDMENT:

These By-Laws may be amended by majority vote of the members of the Board at any regular business meeting.

17 RIVER CONSERVATION DISTRICT- DISPUTED BOUNDARIES:

16.1 The Jackson Zoning Ordinance states that the Board of Adjustment shall be responsible for a "final determination" of the River District Boundary through any parcel of land. This occurs when "there is doubt whether all or a portion of land should be included in the River Conservation District". "In such cases, the Selectmen or Building Inspector shall deny the application therefore." The applicant shall file an application for an "Appeal from an Administrative Decision".

16.2 The burden shall be on the applicant to show how his property should be designated. The Board may hire a New Hampshire certified surveyor or other qualified soil expert who shall review the sturdy prepared by the applicant and shall conduct on-site investigations. A final report shall be submitted to the Jackson Conservation Commission and Board of Selectmen for review and comment.

16.3 The Board shall hold a hearing within thirty (30) days after acceptance of the complete application. The decision shall be made after written comments are received from the Conservation Commission and Board of Selectmen. All costs shall be paid by the applicant. A deposit of \$250 paid to the Town of Jackson is required with the application. Any additional costs must be paid by the applicant before the decision is presented. The Board may in its discretion return any unused portion of these fees.

These By-Laws were adopted at a regular business meeting on 28 July 1978:
amended on 24 January 1980: amended on 1 July 1980: amended on 12 February
1981, and later amended 7/24/85, 7/18/89, 8/15/91, 8/22/91, 9/25/02, 10/15/03,
12/08/04,10/19/05, 2/15/06, 3/22/06,1/17/07

ATTACHMENT: RSA 91-A:3 – Access to Public Records and Meetings

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A

ACCESS TO PUBLIC RECORDS AND MEETINGS

Section 91-A:3

91-A:3 Nonpublic Sessions. –

I. (a) Bodies or agencies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information or testimony in any form is

received shall be closed to the public, except as provided in paragraph II. No body or agency may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

[Subparagraph (c) effective until January 1, 2005; see also subparagraph (c) set out below.]

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting.

[Subparagraph (c) effective January 1, 2005; see also subparagraph (c) set out above.]

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

[Subparagraph (e) effective until January 1, 2005; see also subparagraph (e) set out below.]

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled.

[Subparagraph (e) effective January 1, 2005; see also subparagraph (e) set out above.]

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the body or agency or any subdivision thereof, or against any member thereof because of his or her membership in such body or agency, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any body, board, or agency for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

III. Minutes of proceedings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the body or agency itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1, eff. June 7, 1993; 335:16, eff. June 29, 1993. 2002, 222:2, 3, eff. Jan. 1, 2003. 2004, 42:1, eff. Jan. 1, 2005.

