

TOWN OF WAKEFIELD

STATE OF NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT

MISSION STATEMENT

The Zoning Board of adjustment provides a valuable service as a safety valve that prevents our important zoning regulations from being considered unconstitutional. Occasionally an otherwise good restriction will, in that specific situation, create a hardship by preventing a reasonable use but not make any significant advancement to the good purpose of that restriction. In that case, the Zoning Board of Adjustment should consider providing relief to a properly presented argument that the applicant has made while preserving the overall good purposes of that regulation. – Adopted May 16, 2022

RULES OF PROCEDURE

Revised through April 17, 2023

TOWN OF WAKEFIELD
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE
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TOWN OF WAKEFIELD, NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT

RULES OF PROCEDURE

ARTICLE I – AUTHORITY & DUTIES

These rules of procedure are adopted under the authority of New Hampshire, Revised Statutes Annotated, Chapter 676:1, as amended.

ARTICLE II – OFFICERS

- A. Officers – Generally: Appointments or reappointments of Zoning Board of Adjustment (“Board”) members by the Wakefield Board of Selectmen (“Selectmen”) shall occur during March of each year. The Board shall meet no later than April 30th for purposes of electing officers from the appointed membership. The Board shall schedule a meeting for this purpose, even if a regular Board meeting is not otherwise scheduled.

Election of officers shall be by a quorum of members. All *regular* members are eligible for election. All officers shall have the right to sit and vote on all Board business and issues, unless otherwise excused or recused from doing so. The term of all officers shall be for one year or until the next annual election takes place, and all officers shall be eligible for reelection.

- B. Chairperson: The chairperson shall be elected by the Board members in attendance at the meeting. If all five regular members are present, they will be the only ones eligible to vote. In the event a regular member is absent, then that member shall be replaced in accordance with other provisions of these Rules. The chairperson shall preside over all meetings and hearings, appoint such committees as directed by the Board, and shall affix his/her signature in the name of the Board.

The chairperson shall also be responsible for the submission of prospective Board member names to the Selectmen, following the Board’s procedure for submitting nominations for appointment (see Article III).

The Selectmen have sole authority for the appointment of Board members. The procedure set forth under Article III is not a waiver of the Selectmen’s authority, nor is it an assumption of authority by the Board. Rather, it is a means for the Board to assist the Selectmen in the selection process.

- C. Vice Chairperson: A vice chairperson shall be elected in the same manner as the Chairperson. He or she shall have the full powers and duties of the chairperson on a matter that comes before the Board during the absence of the Chairperson.
- D. Clerk: A Clerk (also known as the “Board Secretary”) shall be hired by the Town of Wakefield, pursuant to the Town’s usual hiring procedures and practices. He or she shall report directly to the Chairperson, but shall be subject to the usual supervisory and regulatory practices of personnel within the Town of Wakefield employee system.

The Clerk is not an officer of the Board, and has no voting rights. The Clerk is responsible for maintaining a record of all meetings, transactions and decisions of the Board, as well as performs such other duties as the Chairperson may direct or as the Board may direct.

ARTICLE III – BOARD MEMBERSHIP

- A. Number of Members: In accord with RSA 673:3, the Selectmen shall appoint five (5) regular members and up to five (5) alternate members to the Board. In order to ensure an applicant has a full Board to hear his/her case, it is important for the Board to continuously fill all vacancies promptly. 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 chairperson as soon as possible. Members, including the chairperson and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.
- B. Regular and Alternate Members: When a regular member vacancy occurs, the Board shall, at its next regularly scheduled meeting, include on its agenda under “New Business” an item to address to the Selectmen an appointment to fill the regular member vacancy for the remainder of the term.

Following discussion, the Board shall take a vote on which alternate member(s) shall be recommended by the Chairperson to the Selectmen for appointment as a regular member, for the remainder of the departing member’s term. The Board may consider and evaluate other persons or non-members for such a vacancy, in addition to alternate members, while giving all candidates consideration of various factors, including seniority, their level of interest, past attendance, participation at meetings, attendance at seminars, and the like.

Upon selection by the Board, the selected member(s) and the Chairperson shall fill out and sign the nomination form and the Chairperson shall immediately forward the form to the Selectmen. The Selectmen are not bound by such recommendation, as they have exclusive authority to appoint members to the Board. Should the Selectmen not approve a nomination, then the Board shall follow the process again until a nomination is approved. The Board may recommend more than one person from which the selectmen may choose to fill the vacancy.

Upon a vacancy occurring in an alternate member position, the Chairperson shall direct the Clerk to give notice of a vacancy existing on the Board for an alternate member. The manner and form of such notice shall be left to the Chairperson's discretion, but may include notice being posted at the Sanbornville Post Office and at the Town Hall bulletin board.

Any such notice shall direct interested prospective alternate members to submit a letter of interest to the Board's Chairperson. Upon receipt of a letter of interest, the Chairperson shall contact the prospective candidate and may request him/her to attend the Board's next scheduled regular meeting. In such event, the Clerk shall include an agenda item entitled, "Prospective Alternate Member," on that meeting's Agenda.

Under the agenda's "Prospective Alternate Members" item, the Board may conduct an informal public meeting and discussion with each candidate. Following the discussion, the Board will vote whether to recommend the person for the alternate's position.

- C. Service of Alternates: Alternates are encouraged to attend, be prepared and participate in all meetings and other such Board activities.

Whenever the Board is convened and less than five regular members are present, the Chairperson shall designate, in his/her discretion, one or more alternate members to stand in for the absent regular member(s). The alternate shall have full responsibilities and duties of a regular member, including voting on any issue.

In the event a regular member arrives late at a meeting, the alternate standing in for that member will step down, provided significant testimony has not yet been received. Otherwise, the alternate will continue to sit for that member.

In selecting which alternate to designate, the Chairperson should consider a number of factors, including the available alternates' frequency of substitution, attendance, and the like. The Chairperson's goal shall be to ensure that all alternates are given an overall equal opportunity to substitute for regular members.

- D. Participation: When not designated as voting members, alternates and regular members who are not sitting on an issue are encouraged to remain in the audience and listen and ask questions as a member of the community.

ARTICLE IV – MEETINGS

- A. Public Hearings: Public hearings will generally be held at Town Hall, at 7:00 p.m. on the third Monday of each month. If the third Monday of the month falls on a holiday or if the Town Hall is unavailable to hold the public hearing on the third Monday, the public hearing will be scheduled to occur at a date, time and place as determined by the Chairperson, after consultation with the Town Planner or Administrative Assistant.

Public hearings will be scheduled only when there is business to conduct.

If a public hearing is scheduled and subsequently cancelled, a notice of cancellation shall be posted at Town Hall, the Sanbornville Post Office, and, if practical, on the Town's website and elsewhere as determined by the Chairperson.

- B. Other meetings: The Chairperson may call other meetings, at such times and places as needed. Notice to members shall be at least 5 calendar days prior to each meeting. Notice to the public shall be in the same manner as that called for a regular meeting. Notice shall specify the purpose of the meeting.
- C. Required Notice for "Public Hearing" Meetings: Public notice of hearings on each application shall be given in the manner prescribed in RSA 676:7.
 - 1. Notice shall be posted in the Town Hall lobby and on the Town's website not less than 5 days prior to the hearing.
 - 2. Notice shall be published in the Granite State News and Carroll County Independent at least five (5) days prior to the hearing.
 - 3. The Clerk shall attempt to contact all members and alternates to remind them of a scheduled meeting, within 72 hours of such meeting.
 - 4. The notice shall include a general description of the proposal which is subject of the application and shall identify the applicant and the location of the proposal and shall also be given to the planning board, city/town clerk, and other parties deemed by the board to have special interest.
 - 5. The applicant shall pay for all required notice costs in advance.
- D. Required Notice for Other Meetings: All other meetings, during which no public hearing on an application is being heard, shall comply with the notice requirements under RSA 91-A:2, II. Notices shall be placed in the Town Hall lobby and on the Town's website.
- E. Quorum: A quorum for all meetings of the Board shall be three members, including alternates sitting in place of regular members. RSA 674:33 III, provides "the concurring vote of three members 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 action, application or appeal.

In event that the Board has in attendance less than five regular and/or alternate members, but has at least three to constitute a quorum, the Chairperson shall request of the applicant (on the record) whether or not the applicant desires to proceed with less than five members after being advised that at least three members must concur in the decision on his/her application. If the applicant does not desire to proceed, the application shall be continued and the Board shall immediately (at that meeting) schedule a meeting to be held within reasonable time for purposes of hearing the application with five members present. The board shall announce the time, date, and location of the continued hearing.

If the board cannot determine the time, date and location of the continued hearing, the board shall provide new notice to all parties pursuant to RSA 676:7.

F. Reserved.

- G. Disqualifications. If any member finds it necessary to disqualify or recuse his or herself from sitting in a particular case, as provided in RSA 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. The disqualifications shall be announced by either the Chairperson or the member his/herself before the beginning of the public hearing on the case. The member disqualifying him/herself shall then immediately remove him/herself from the Board table during the public hearing on and during all aspects of and deliberation on the case. Any uncertainty as to recusal or the need for disqualification shall be met with a review of RSA 673:14 by the Board, and if uncertainty exists, RSA 673:14 (II) shall be followed.

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should step down (recuse themselves) board members should review the questions which are asked of potential jurors to determine qualification (RSA 500-A:12). A potential juror may be asked whether he or she:

1. Expects to gain or lose upon the disposition of the case;
2. Is related to either party;
3. Has advised or assisted either party;
4. Has directly or indirectly given an opinion or formed an opinion;
5. Is employed by or employs any party in the case;
6. Is prejudiced to any degree regarding the case; or
7. Employs any of the counsel appearing in the case in any action then pending in court.

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

1. Call to Order by Chairperson
2. Pledge of Allegiance to the flag of the United States of America
3. Roll call by the Chairperson
4. Public hearing(s)
5. Board Business
6. Correspondence
7. Minutes of previous meeting
8. Set Next Meeting Date
9. Adjournment

- I. Public Hearings on Applications of Appeal to Board: The following shall be the procedure for hearing applications of appeal to the Board. After calling the application for hearing, the following steps shall be followed:

Step 1: Call to order by Chairperson.

Step 2: The Chairperson (or Town Planner, if any) shall address each item on the checklist to ensure the application is properly before the Board. If the checklist is

not complete, the Board may continue the hearing until the checklist is completed or may proceed with the hearing to determine which checklist items are missing.

The Checklist should include, at a minimum, the following items:

- ☐ Proper type of application submitted*
- ☐ Proper newspaper notice
- ☐ Proper notice to abutters
- ☐ Fees have been paid
- ☐ Easements (if applicable) on application (yes or no)
- ☐ Proper notice to holders of easements or conservation easements, if any
- ☐ All matters of substance addressed (if not, Board may continue hearing)
- ☐ All matters of form addressed and corrected
- ☐ Proper signatures exist on application
- ☐ Owner's signature affixed together with applicant's signature (unless same person)
- ☐ Proper Zone of property exists on application
- ☐ Proper type of application submitted (Board may allow amendments and proceed, based upon Board's discussion and resolution)
- ☐ All overlay zone issues addressed in application
- ☐ All necessary plans, drawings present to allow full understanding of application
- ☐ Special information included that is required by ordinance or statute (i.e. sign regulations)
- ☐ Application is complete enough to proceed

*Should an applicant submit the wrong type of application, the Board may allow amendments to the application and proceed, based upon the Board's discussion and resolution.

Step 2: The Chairperson shall summarize for the public the key points of the application, which may include the zoning district(s), street address, applicant's name, relief sought, et cetera.

Step 3: The Chairperson shall ask the applicant or the agent to present the appeal. Each person who appears is required to state his/her name and why he/she is interested in the case.

Step 4: The Chairperson shall ask if any board member has any question for the applicant.

Step 5: The Chairperson shall ask if any member of the public wishes to speak for or against the application.

Normally, those wishing to speak in favor are given the first opportunity and those in opposition shall follow.

Questions by members of the public for the applicant must go through the Chairperson.

Members of the Board may ask questions at any point during the testimony and of any person, subject to the Chairperson's direction.

Any member of the board, through the Chair, may request any party to the case to speak a second time.

The applicant and those in favor shall be allowed to speak in rebuttal. Those in opposition shall be allowed to speak in rebuttal.

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.

Step 6: The Chair shall close the public hearing, following which the Board shall deliberate. Each member of the board shall be given the opportunity to speak. No further testimony is taken at this time, subject to Chairperson allowing same only under exceptional circumstances or allowing Board members to ask additional questions of the applicant as the Chairperson deems just and fair and in order. The Chairperson shall present a summary of the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.

Step 7: The Chairperson shall call for a vote of the Board following a reasonable period of time for deliberations.

- J. Voting. The chairperson may assign the task of drafting a motion to a board member who shall bring a draft motion to the board at the continuation of the deliberative portion of the meeting for the consideration of the board. [SMW1]

Deliberations and voting shall proceed on each application based on the type or request as follows:

1. Variances: A determination shall be made as to whether the application meets the criteria in RSA 674:33. Each criterion as established by state law shall be discussed to include, but not be limited to, whether or not the applicant demonstrated that the test had been met along with the reasons why the board members agreed or disagreed. A vote shall then be taken to determine whether or not the test was met. If all the individual test votes pass, then the variance shall be granted. If any one of the individual test votes fail, then the variance shall be denied. At the conclusion of voting on the individual tests the chair may call for a vote to affirm the results of whether to grant or deny the variance. Changes to this voting method, are effective 60 days after the date at which the ZBA decides to change the method and only apply to applications filed after the change.
2. Special Exceptions: In the case of a request for a special exception, a determination shall be made as to whether or not the applicant demonstrated that each of the conditions required in the Zoning Ordinance have been met along with the reasons why the board members agreed or disagreed. The determination shall be made in the form of a vote after the discussion of each condition.

3. Appeal from an Administrative Decision: In the case of a request to overturn a decision rendered by an administrative official or board, the ZBA shall determine if the decision made was an error in a order, requirement, decision or determination. If such an error occurred, then the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from and may make such order or decision as ought to be made.
 4. Equitable Waiver: In the case of a request for an Equitable Waiver, the Board shall discuss and vote as required by RSA 674:33a. A majority vote shall be required to meet the condition.
- K. Site Walk Necessary: On every new application, appeal or action, a site walk of the subject property shall be scheduled. The site walk shall be conducted at such other time as the Board shall agree. The time, date and place of the site walk shall be given as part of the public notice for the application, appeal or action. Board members intending to sit on the Board during the determination of a particular case are strongly encouraged to attend the site walk.
- During the site walk, the applicant shall identify key aspects of the property that the applicant deems important for consideration by the Board. The site walk is not the appropriate venue for taking testimony, and the Chairperson should restrict any attempts by persons to testify during the site walk. The Chairperson should direct all such persons to attend the public hearing to offer testimony at the appropriate time.
- L. Continuations of Public Hearings: A public hearing may be continued for any of the following reasons:
1. Upon written request of the applicant (if prior to a hearing) or upon oral request at the time of the hearing;
 2. Upon reaching 11:00 p.m., or after four hours of meeting time, whichever occurs first;
 3. Upon the membership falling below 5 members;
 4. Upon the Board resolving that additional information or evidence is necessary, or for any other good cause.
- M. Fees upon continuance: The Board will not levy fees for additional notice if, during the hearing, the matter is continued to a specific date and time.
- N. Membership upon continuation of a hearing: In event that a hearing is continued, all members and alternates shall use their best efforts to be present at the subsequent hearing. If a different member or alternate must sit in a subsequent hearing, then such different member or alternate shall review the file, all minutes taken to date, and view the subject site (if needed).

- O. Alternate's status upon continuation of hearing: In event that an alternate sits on a case and the case is continued, the alternate shall sit on all subsequent proceedings until final decision is rendered on that case, even if a regular member becomes available, unless the alternate member must step down for other reasons.
- P. Reconsideration by the Board/ Motions for Rehearing:
1. 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. Any Party to the action or proceedings for a variance, special exception or other application, or any person directed thereby, may apply for a rehearing within thirty (30) days from the day following the date the Board voted to approve or disapprove the application.
 2. Motions for Rehearing can only be received in the office of the board during normal business hours.
 3. Upon the filing of a motion for rehearing, the Board shall consider whether to grant or deny the motion for rehearing at the next following regular meeting of the Board. In the event that the motion for rehearing is received not less than twenty days prior to the next following regular meeting of the Board or in the event that no regular meeting of the Board is scheduled within thirty days of receipt of the motion for rehearing, the Board may elect to hold a special meeting to consider whether to grant or deny the motion for rehearing. A decision as to whether to grant or deny a motion for rehearing shall be made within thirty calendar days of the receipt of the motion for rehearing. [SMW2]
 4. The Board shall consider whether to grant or deny a motion for rehearing only at a public meeting of the Board. Published notice of the intent of the Board to act upon the motion for rehearing and notification to abutters or parties shall not be given nor will public testimony be accepted, however, any consideration of a motion for rehearing shall appear on the Board's regularly posted agenda. The Board may consult with town staff, legal counsel or any other necessary party in reaching its decision as deemed appropriate by the Chair.
 5. If a motion for rehearing is granted by the Board, the Board may act to suspend the order or decision at issue and may choose to limit the scope of the rehearing to issues raised by the moving party in the motion for rehearing.
 6. If the Board grants a rehearing, this rehearing shall be held at the next following regular public hearing of the Board or act at a special meeting in accordance with Section IV (B) of the Rules of Procedure. Such rehearing shall be controlled by the same procedures and rules as a new appeal [SMW3].
- Q. Minutes: The Clerk shall be responsible for the taking and production of minutes, in accord with RSA Chapter 91-A.

All public meetings shall be electronically recorded to allow for the production of minutes following the meeting. The electronic recording may be destroyed by the Clerk anytime following the approval of the minutes by the Board, provided however, in the event an applicant or other person desires a copy of the electronic recording and agrees to pay for such copy or otherwise desires to have the electronic recording saved, such request shall be made in writing (preferably by certified mail) to the Clerk so that such notice is received prior to the scheduled vote on the approval of the subject minutes. Such perfected requests shall be honored and the electronic recording saved, copied or disseminated pursuant to the requestor's requests.

Additionally, the Clerk will complete the written production of the minutes within 72 hours following the meeting and immediately forward (by email or otherwise) the minutes to the Chairperson for his/her immediate review for clerical errors. Within 5 business days following the meeting, (even in event of the Chairperson not having the opportunity to review), the minutes will be placed on file in the Town Hall as well as forwarded by email to all members having an email address. The Board shall review, amend as necessary, and approve the minutes at the next scheduled regular meeting of the Board.

ARTICLE V – APPLICATIONS OF APPEAL

- A. Types: The types of applications of appeal are governed by statute and are of four primary types: variance, special exception, equitable waiver of dimensional requirement and appeal of administrative decision. The Board has adopted application forms, including instructions for each application, which applicants must fully complete.
- B. Amendments to Applications: The Board, in its discretion, may vote to waive any procedure as set forth in the above-referenced instructions, and may vote to allow amendments to applications when a correction is needed or deficiency noted in the application, at the time of hearing. As to the complexion and content of a particular application, "matters of form" may be amended at the time of hearing, without a vote of the Board, while substantive deficiencies in an application can only be allowed by Board vote. Should a substantive deficiency not be allowed amendment at the time of the hearing, then the hearing shall be continued to the next scheduled regular meeting or a regular meeting will be scheduled within reasonable time.
- C. Initial Review of Applications Upon Receipt: When an application of appeal is received by the Town, the Chairperson, Clerk, or the Town Planner, if any, shall review the application within five (5) business days following receipt to ensure the following: (Note: All items on the above-referenced Checklist should also be reviewed by the Chairperson, in addition to the following)
 - 1. The application is completed fully and all required information is set forth on the application by the applicant, using the approved application forms.
 - 2. The application cites the specific ordinance or administrative decision under appeal, and has appended a copy of the relevant decision letter, notice or other document to the application.

3. The application has appended to it all material documents.
4. The correct fees have been paid and received by the Town. No application shall be heard until such time that all fees have been paid.

Should an application be deemed by the Chairperson to be incomplete, he/she shall immediately contact the applicant by telephone (and in event the applicant cannot be reached by phone, by mail, that day), and give notice of the deficiency(ies).

Unless the applicant requests withdrawal of his/her application, the fees which were paid are not returned with the application, but shall be held on deposit, pending receipt of the fully completed application.

- D. Acceptance of an Application: Once the application is deemed complete, the Clerk shall schedule a public hearing to occur within forty-five (45) days of the *receipt* of the application.
- E. Transfer of copies by Clerk to Members: The Clerk shall make copies of the application and send copies to each member and to Code Enforcement.
- F. Refund/Waiver of Fees: A refund or waiver of fees shall be provided only in accord with this section.
 1. If the application is withdrawn within ten (10) days of submission, and the Board has incurred no costs for certified mail or newspaper notice, then all fees with the exception of \$75.00 shall be refunded.
 2. If the application is withdrawn after ten (10) days of submission, and the Board has incurred no costs for certified mail or newspaper notice, then all fees with the exception of the \$125.00 Application Fee shall be refunded.
 3. If the newspaper notice for a public hearing has been sent, no refund of the “Public Notice Fee” under Article IX, A, 2 shall issue.
 4. If any certified mail notices for a public hearing have been mailed, no refund of the “Certified Mail” fees under Article IX, A, 3 shall issue.
- G. Reserved.
- H. Notices of Decisions of the Board: Upon the decision of the Board on any application of appeal, the following procedure shall take place:
 1. The Chairperson will orally convey the decision to the applicant at hearing and notify the applicant that he/she or any party, or any other person directly affected by the decision may request a rehearing pursuant to RSA 677:2, within 30 days.

2. The Town Planner and/or the Chair shall write the Notice of Decision. The Board may seek legal review of the decision if deemed necessary.
 3. Within 5 business days of the Public Hearing, the written decision shall be mailed to the applicant, the Code Enforcement Officer, all interested parties, which may include the Town Administrator, the Planning Board Chairperson and Town Counsel.
 4. The written decision shall, if it is disapproval, state the reasons the Board voted to deny the application. If the written decision is an approval, it shall state all conditions, if any, the Board placed on the approval.
 5. The written decision shall be placed on file in the board's office and shall be made available for public inspection at the Town Hall within 5 business days following the vote.
- I. Reserved
- J. Waiver of Procedures: The Board may waive any Rule of Procedure provided such waiver does not run contrary to the law.
- K. Expeditious Decisions. The Board shall decide cases as expeditiously as is both reasonable and practicable, given both the statutory requirements and the needs of the parties, including the Town, for continuances, other evidence gathering, et cetera.
- L. Additional Requirements Related to Applications of Appeal: Pursuant to RSA 676:5, appeals of administrative decisions shall be brought to the Board within "reasonable time." For purposes of this particular rule, "reasonable time" shall be thirty (30) days, unless the applicant can show the Board that additional time is reasonable. The time frame under this rule shall run from the date of issuance of the disputed administrative decision. A copy of the application for appeal shall be transmitted by the Clerk to the administrative officer, board or department that issued the decision from which the administrative appeal is taken.
- M. All forms prescribed herein and revisions thereof shall be adopted by resolution of the Board and shall become part of these rules of procedure.

ARTICLE VI – NOTICE TO NEIGHBORING COMMUNITIES

Should either the Chairperson, upon his or her initial review of an application, or the Board, upon hearing an application, decide that any application has either a direct or indirect effect or impact on a neighboring town (that impact being statutorily defined or otherwise) such town shall be provided notice of the application and hearing to its town clerk by certified mail, at the applicant's expense. In the event the need for such additional town notice is initially discovered during a public hearing, the Board shall continue the hearing to a later date to allow such notice to be sent to the subject town.

ARTICLE VII – JOINT MEETINGS AND HEARINGS

- A. An applicant seeking a local permit may request two or more land use boards, including the ZBA, to hold a joint hearing when the subject matter of the requested permit is within the responsibilities of those land use boards. See RSA 676:2. In addition, the Board may, on its own initiative, request a joint hearing.
- B. In event of a petition by an applicant for a joint hearing:
 - 1. The Board Chairperson shall call a meeting at the earliest possible time, with notice in accord with Article IV.D., to discuss and determine whether or not the Board desires to have a joint meeting.
 - 2. If the Board approves holding a joint hearing, such hearing shall be confirmed by the other board's Chairperson as having been approved by that board, and a joint hearing shall be immediately scheduled.
 - 3. Notice of such joint hearing shall be given by way of the usual notice procedures, as described more particularly above in Article IV, with the ZBA Chairperson responsible for such postings and notices, unless the boards involved in the hearing otherwise agree.
 - 4. In event the Planning Board participates in the joint hearing, its chairperson shall chair the joint hearing. If the Planning Board is not included, then the boards involved shall determine which board's chairperson shall chair the hearing.
 - 5. Procedures as set forth above, as well as those of the other board(s) that are not inconsistent with the procedures set forth above, shall be followed in any such joint hearing.

ARTICLE VIII – MEMBER'S PARTICIPATION IN TRAINING

There are several seminars and conferences available to members, including the Office of Planning and Development (OPD) annual conferences where training seminars are given. Members and alternates are encouraged to attend one training seminar during the course of each year. Members and alternates are reminded that their re-appointment takes into account seminar attendance, among other factors.

Should a member, alternate or regular, attend a seminar and incur an admission fee, the member may submit proof of payment to the Chairperson who shall ask for reimbursement.

ARTICLE IX – FEES

- A. The fees and payable for each application are as follows:
 - 1. Application Fee: \$125.00.
 - 2. Public Notice Fee: \$125.00, to include the cost of newspaper notice, and any recording fee for the decision.

3. Certified Mail Fee: actual cost of current postage rates each, to be sent to each applicant, each agent for the applicant, each attorney for the applicant, each abutter, and each interested party entitled to notice under New Hampshire Law.
- B. The applicant shall pay for all additional fees for public notice and certified mail resulting from the following, except as provided in sections D and E below:
1. A rehearing being granted on an application, regardless of who requests the rehearing; and/or
 2. Any other hearing on the application which requires additional public notice because of an appeal to the superior court or any other intervening litigation, or for any other reason.
- C. Failure of the applicant to pay for all additional fees for public notice and certified mail required by section B above shall result in the Board taking whatever action, including but not limited to denial of the application, revocation of the approval, as it deems just and reasonable under the circumstances.
- D. If the need for additional notice under section B above is due entirely to the fault of the Board, the Board shall pay for the additional notice.
- E. If the Board of Selectmen is seeking the rehearing, or is otherwise primarily responsible for the requirement for additional fees for public notice or otherwise, then the Board of Selectmen, and not the applicant, shall pay for all such notice fees, failure of which the Board of Adjustment may take whatever action, including but not limited to denial of the motion for rehearing, as it deems just and reasonable under the circumstances.

ARTICLE X – MULTIPLE APPLICATIONS - FEES

- A. In event an applicant files more than one application (e.g. a variance and an appeal of administrative decision, or a variance and a special exception, etc.) at the same time, the following fees are applicable:
1. The Application Fee for the first application shall be consistent with Article IX, A.1. For each additional application, the Application Fee shall be \$50.00.
 2. The Public Notice Fee for the first application shall be consistent with Article IX, A.2. For each additional application, the Public Notice Fee shall be \$50.00.
 3. The Certified Mail Fee for the first application shall be consistent with Article IX, A.3. For each additional application, the Certified Mail Fee shall be a flat fee of \$25.00 for up to 10 certified mail notices, and an additional \$2.50 for each abutter over 10.

- B. If the applications are not filed contemporaneously, then each application shall be accompanied by all fees required by Article IX.

ARTICLE XI – PROCEDURE FOR TOWN COUNSEL OPINIONS

Should a question arise at hearing related to any issue, including any issue related to a pending application, the Board may vote to continue the meeting to consult with Town Counsel or request an opinion from Town Counsel before continuing taking evidence or deliberating. In such event, the Board shall continue the matter for reasonable time to allow for receipt of the legal opinion.

All communication with Town Counsel shall be made through the Chairperson, unless Town Counsel is present at a particular public hearing or is present at a closed meeting for purposes of attorney client communication. Upon receipt of an opinion, the Chairperson and/or Clerk shall make copies of the opinion and place same in sealed envelopes addressed to the board members, marked "confidential," and placed in the Board mail box for retrieval by board members for review prior to the next scheduled meeting on the subject matter. Alternatively, the Chairperson and/or Clerk may share the opinion with the Board via a duly called nonpublic meeting or via confidential email for review prior to the next scheduled meeting on the subject matter.

ARTICLE XII – ADOPTION/AMENDMENT

- A. After legal review, these Rules shall be re-adopted or amended at a regular meeting of the Board and shall be placed on file with the town clerk for public inspection.
- B. This version of the Rules was adopted on April 17, **2023**.