

TOWN OF TEMPLE

ZONING BOARD OF ADJUSTMENT

Rules of Procedure

(Revised 01/11/2007)

I. Authority

- A. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter **676:1**, and the zoning ordinance and map of Temple, NH.

II. Officers

- A. A **chair** shall be elected annually by a majority vote of the board in the month of April. The chair 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.
- B. A **vice-chair** shall be elected annually by a majority vote of the board in the month of April. The vice-chair shall preside in the absence of the chair and shall have the full powers of the chair on matters that come before the board during the absence of the chair.
- C. **The chair** and **vice-chair** shall serve for one year and shall be eligible for re-election.
- D. The **clerk** shall not be a member of the Board, but shall be an employee of the Board, appointed by the chair with the approval of the Board of Selectmen, and serving at the pleasure of the chair.

The clerk shall maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as may be assigned by the chair or as the Board may direct by resolution.

If the clerk is unable to attend a meeting of the Board, or wishes to participate as a party or member of the public in a hearing on an appeal, the chair shall appoint a member of the Board as acting clerk, or hire a substitute clerk for the occasion.

III. Members and Alternates

- A. Members and alternate members must be residents of Temple 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 shall participate in the decision making process and vote to approve or disapprove all motions under consideration.
- B. Up to five alternate members shall be appointed, as provided for by the local legislative body, and should 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. If any regular board member is absent from any meeting or hearing, or disqualifies him/herself from sitting on a particular case, the chair 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.

- C. If both the chair and vice-chair are going to be absent either the chair or vice-chair shall appoint an acting chair.

IV. Meetings

- A. Regular meetings shall be held, as required, at 7:30 p.m. on the first Thursday of each month, at the Temple Municipal Building, Route 45. Notice of a meeting or the fact that there will not be a meeting shall be posted at least seven (7) days in advance except in an emergency. Other meetings may be held on call of the chair provided posted notice and notice to each member is given at least twenty four (24) hours, excluding Sundays and legal holidays, prior to such meetings. All notices shall be posted at both the Temple Store and the Municipal Building.
- B. **Quorum.** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.

RSA 674:33, III provides that "...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.

- C. **Order of Business.** The order of business for regular meetings shall be as follows unless varied by majority vote of the board:
 1. Call to order by the chair
 2. Introduction of Board members by chair
 3. Public hearings continued from previous meetings
 4. Public hearings on new appeals
 5. Minutes of previous meetings
 6. Communications
 7. Other business
 8. Adjournment

V. Conflicts of Interest (Adopted July 6, 2006)

- A. The general public and persons having matters or issues before the Temple Zoning Board of Adjustment (Temple ZBA) are entitled to know that Temple ZBA members are disinterested in any decision they participate in.
- B. A person may temporarily step-down or disqualify him or herself during consideration of a particular matter or issue before the Temple ZBA for any reason. In this situation, the person shall state on the record that he or she is stepping down.

- C. A person shall step-down or disqualify himself or herself from any discussion of or decision on any matter before the Temple ZBA in which he or she has a financial interest or any member of his/her immediate family has a financial interest.
- D. New Hampshire law (RSA 673:14, I) prohibits a member of a land use board participating in deciding or sitting on the hearing of any question which the board is to decide in a judicial capacity if:
 - 1. The member has a direct or financial interest which differs from the interests of other citizens; or
 - 2. The member would be disqualified for any cause to act as a juror in a lawsuit concerning the same matter.
- E. A person who has stepped-down or disqualified himself or herself shall leave the Temple ZBA table. Thereafter, he or she may choose to participate in the discussion or hearing as a party, a representative of a party, or as a member of the public.

VI. Application/Decision

A. Applications.

- 1. Each application for a hearing before the board shall be made in writing on forms provided by the board and shall be presented to the clerk of the board or the board's designate, who shall record the date of receipt over his or her signature and collect the appropriate fee.

Application for a hearing shall include appeals from administrative decisions, requests for variances, special exceptions, and/or equitable waiver of dimensional requirements.

Appeals from an administrative decision taken under **RSA 676:5** shall be filed within 30 days of the later of the date of the decision or the date the applicant received written notice of the decision.

To the extent necessary to comply with applicable timelines, the clerk or his/her designate, through consultation with the chairperson of the Board, shall schedule a matter for hearing (or any application or appeal) at the next regularly scheduled meeting, or at such other meeting called by the Chairperson.

- 2. The applicant shall pay the costs of notice and the administrative costs associated with the application and hearing at the time the application is made. In the event that the collected fee is insufficient for the required notices and other administrative costs, the applicant shall be required to pay the additional amount when *requested* by the clerk or his/her designate.
- 3. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.

B. Notice of Public Hearing.

1. Public notice of public hearings on each application shall be given in a local newspaper and shall be posted at the Temple Municipal Building and the Temple Post Office not less than five days (5) before the date fixed for the hearing. Notice shall include the name 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.
 2. Personal notice shall be made by certified mail to the applicant and all abutters not less than 5 days before the date of the hearing. Notice shall also be given to the planning board, town clerk and other parties deemed by the board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
- C. **Public Hearing.** The order of events in a public hearing shall be as follows, except when the Board chooses to vary it:
1. The chair shall call the hearing in session and introduce the case.
 2. The chair shall call for disqualifications.
 3. The clerk shall read the application and report on how public notice and personal notice were given.
 4. The applicant shall be called to present his/her appeal.
 5. Others appearing in favor of the appeal shall be allowed to speak.
 6. Those in opposition to the appeal shall be allowed to speak.
 7. The applicant and those in favor shall be allowed to speak in rebuttal.
 8. Those in opposition to the appeal shall be allowed to speak in rebuttal.
 9. The Board will close the public hearing and may choose to deliberate on the case either immediately, later in the same meeting, or at a future meeting. When the Board chooses to deliberate on the case immediately, it may also retain the option of reopening the public hearing during its deliberations to ask additional questions of the parties.

The conduct of a public hearing shall be governed by the following rules:

1. Members of the board may ask questions at any point during testimony.
2. Each person who appears shall be required to state his/her name and address and indicate whether she or he is a party to the case or an agent or counsel of a party to the case.

3. Any member of the board, through the chair, may request any party to the case to speak a second time.
4. Any party to the case who wants to address another party to the case must do so through the chair.
5. Any person submitting a document or exhibit at a hearing shall provide at least one (1) legible copy (the Board would prefer six copies.)
6. Any person who wants the board to compel the attendance of a witness shall present his/her request in writing to the chairperson not later than 3 days prior to the public hearing.
7. 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.

D. Decisions. After deliberating on an application (see item VI. C. 9 above) the board shall approve, approve with conditions, or deny the appeal. Deliberation and fact-finding, for example site visits, may span more than one meeting. The board will make every possible effort to announce the date of future, continued hearings or deliberations at the current meeting.

Notice of decisions will be made available for public inspection within 144 hours, as required by **RSA 676:3**, and will be sent to the applicant and the owner. If the appeal is denied or deferred, the notice shall include the reasons therein.

When a party files for a request for reconsideration of a decision made by the ZBA, the party filing should send a copy of the request to the opposition.

VII. Records

- A. The records of the board shall be kept by the clerk and made available for public inspection at the Temple Municipal Building in accordance with **RSA 673:17**.
- B. Final written decisions will be placed on file and available for public inspection within 144 hours after the decision is made. **RSA 676:3**.
- C. 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 144 hours of the public meeting. **RSA 91-A:2.II**.

VIII. Amendments

These rules of procedure may be amended by a majority vote of the members of the board provided that such amendment is read at two successive meetings.

IX. Joint Meeting and Hearings

- A. **RSA 676:2** provides that the board of adjustment may hold joint meetings or hearings with other “land use boards,” including the planning board, the historic district commission, the conservation commission, the building code board of appeals, and the inspector of buildings, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
- B. Joint business meetings with any other land use board may be held at any time when called jointly by the chairpersons of the two boards.
- C. A public hearing on any appeal to the board of adjustment will be held jointly with another board only under the following conditions:
 - 1. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - 2. If the other board is the planning board, **RSA 676:2** requires that the planning board chairperson shall chair the joint hearing. If the other board is not the planning board, then the board of adjustment chairperson shall chair the joint hearing; and
 - 3. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and
 - 4. The other board shall concur in these conditions.