



TOWN OF TEMPLE

ZONING BOARD OF ADJUSTMENT (ZBA)

Rules of Procedure

Revised October 27th 2022

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 of Temple, NH.

II. Officers

- A.** The Chair shall preside over all meetings and hearings, appoint such committees as directed by the ZBA and shall affix his/her signature in the name of the ZBA. The Chair shall appoint a ZBA Member to take minutes of meetings or hire a person to take minutes for the occasion.
- B.** The Vice-Chair, in the absence, recusal, or unavailability of the Chair, shall have the full power and responsibilities of the Chair on matters that come before the ZBA.
- C.** The Chair and Vice-Chair shall serve for one year and shall be eligible for re-election. The Chair and Vice-Chair shall be elected annually by a majority vote of the ZBA's first meeting after the Annual Town Meeting, or when a vacancy in the Chair or Vice-Chair position occurs.

III. Members and Alternates

- A.** Members and Alternate Members must be Temple residents and US citizens and are expected to attend each meeting of the ZBA to exercise their duties and responsibilities. Any Member unable to attend a meeting shall notify the Chair as soon as possible. Members shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.
- B.** The Board of Selectmen shall appoint the five Members of the ZBA to staggered three year terms.

- C. The Board of Selectmen shall appoint up to five Alternate Members with staggered three year terms. Alternate Members should attend all meetings to familiarize themselves with the workings of the ZBA to stand ready to serve whenever a regular Member of the ZBA is unable to fulfill his/her responsibilities. If any regular ZBA Member is absent from any meeting or hearing, or recuses him/herself from sitting on particular case, the Chair shall designate one of the Alternate Members to sit in his/her place for that meeting or a hearing, for the entire hearing. Such Alternate Member(s) shall be in all respects a full Member of the ZBA while so sitting.
- D. If both the Chair and Vice-Chair are absent or recuse themselves from a meeting either the Chair or Vice-Chair shall appoint an acting Chair.
- E. Alternate Members may fully participate during work sessions or portions of meetings that do not include a public hearing, exclusive of any motions or votes that may be taken.

IV. Meetings

- A.** Meetings of the ZBA shall be held at the call of the Chair when there is a case or ZBA business, and at such other times as the ZBA may determine. Notice of a meeting with its date, time, location and reason shall be posted at least 24 hours (excluding Sundays and legal holidays) in advance except in an emergency. Emergency meetings may be held on call of the Chair provided posted notice and notice to each Member and Alternate Member is given as soon as possible. All notices shall be posted at both the Temple Store and the Municipal Building.
- B. Quorum.** A quorum for all meetings of the ZBA shall be three Members, including Alternate Members sitting in place of a Member.
- C. Order of Business.** The order of business for regular meetings shall be as follows unless varied by majority vote of the ZBA:
1. Call to order by the Chair
 2. Introduction of Board members by Chair
 3. Confirmation of agenda
 4. Disqualifications
 5. Confirmation of quorum
 6. Public input
 7. Minutes of previous meetings
 8. Communications
 9. Other business
 10. Confirmation of date of next meeting.

V. Conflicts of Interest

- A.** The general public and persons having matters or issues before the ZBA are entitled to know that ZBA sitting Members are disinterested in any decision they participate in.
- B.** A Member may recuse him/herself from a particular matter or issue before the ZBA for any reason. In this situation, the Member shall state on the record that they are recusing themselves.
- C.** Member shall recuse him/herself from any discussion of or decision on any matter before the ZBA in which he or she or a member of their immediate family has a direct or indirect financial interest.
- D.** Member who has recused him or herself from a matter being heard by the ZBA shall leave the 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. Applications/Decisions

A. Applications

1. Each application for a hearing or appeal of an administrative decision shall be made on forms provided by the ZBA and shall be filed with the Board of Selectmen's office. The Board of Selectmen's office shall record the date of receipt over his or her signature and collect the appropriate fee.

An appeal of an administrative decision taken under **RSA 676:5** shall be filed within 30 days of the date of the decision.

In order to comply with applicable timelines, the Chair through consultation with the ZBA, shall schedule a meeting or hearing as soon as is practical.

2. The applicant shall pay the filing fee, costs of notices, and the administrative costs associated with the application at the time the application is filed (see application instructions). The applicant will be charged all professional fees including, but not limited to, traffic studies, property evaluation, engineering studies, and regional impact studies as determined necessary by the Board. In the event that the total collected is insufficient, the applicant shall be required to pay the additional amount(s). As per NH RSA 676:7, the applicant's failure to pay the above-noted costs "shall constitute valid grounds for the board to terminate further consideration and to deny the appeal without public hearing."
3. The fees will be assessed as listed in the current "Notice of Land Use Board Fees under RSA 673:16 III" document, available on the town website and at the town office.

B. Notice of Public Hearing.

1. Notice of hearings on each application shall be published in a local newspaper not less than five (5) days before the date fixed for the hearing. Notice shall also be posted at the Municipal Building and the Temple Store not less than 24 hours before such 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. Notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before a hearing.

C. Members Present

1. If there are fewer than five (5) Members (including Alternate Members) present, the Chair shall give the Applicant the option to proceed or not. Should the applicant choose to proceed with fewer than five (5) Members present, that shall not solely constitute grounds for a re-hearing should the applicant fail.
2. If the applicant elects to postpone due to fewer than five (5) Members present, the ZBA shall announce the time, date and location of the continued hearing. If the ZBA cannot determine the time, date and location of the continued hearing, the ZBA shall provide new notice to all parties pursuant to RSA 676:7.
3. **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 ZBA will make every effort to ensure that a full five-Member board is present for the consideration of any appeal.

D. Public Hearing Order of Business. The order of events in a public hearing shall be as follows, except when the ZBA chooses to vary it:

1. The Chair shall call the hearing in session and introduce the case.
2. The Chair shall introduce members, call for recusals, and verify a quorum.
3. The Chair or designated Member shall read the application and report on how notices were given.
4. The ZBA shall determine and announce the order of presenters. Those supporting the application and those opposing it shall be allowed to speak. Rebuttal shall be allowed from both the applicant and the opposition.
5. The Board will close the public hearing, and in the presence of the public may deliberate either immediately or at a future meeting. When the Board deliberates immediately, it retains the option of reopening the public hearing to ask additional questions of the parties. Deliberations once started may be continued at a subsequent date.
6. At any time during the hearing, the ZBA may enter into a non-public session to discuss the case with their attorney.

E. Conduct of Public Hearing The conduct of a public hearing shall be governed by the following rules:

1. Members of the ZBA may ask questions at any point during testimony.
 2. Each speaker shall state his/her name and address.
 3. All speakers must address the ZBA Chair, and no other speakers or attendees.
 4. Any person submitting a document or exhibit shall provide at least seven (7) copies unless the Chair rules that providing such number of copies is impractical.
- F. Decisions.** After deliberating on an **appeal**, the ZBA shall approve, approve with conditions, or deny the appeal. Deliberation and fact-finding, including site visits, may span more than one meeting. The ZBA will announce the date of future, continued hearings or deliberations at the current meeting.

Notice of decisions will be made available for public inspection within five (5) business days, as required by **RSA 676:3**, sent to the applicant, and posted at the Municipal Building and Temple Store. If the appeal is denied, the notice shall include the reasons.

If a Motion for Reconsideration of a Decision is filed within the required 30 calendar days, it shall be handled pursuant to **RSA 677:2**.

VII. Records

- A.** The records of the ZBA shall be kept 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 not more than five (5) business days after the decision is made. **RSA 91-A:2, II.**
- C.** Minutes of all meetings including names of Members, persons appearing before the board, and a brief description of the subject matter shall be open to public inspection not more than five (5) business days after any public meeting. **RSA 91-A:2, II.**

VIII. Joint Meeting and Hearings

- A.** **RSA 676:2** provides that the ZBA may hold joint meetings or hearings with other “land use boards,” including the Planning Board, the Historic District Commission and the Conservation Commission, 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 meetings or hearings with any other land use board may be held at any time when called jointly by the Chairs of the boards.
- C.** A public hearing on any appeal to the ZBA 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 Chair shall Chair the joint hearing. If the other board is not the Planning Board, then the ZBA Chair 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.

IX. Amendments

These Rules of Procedure may be amended by a majority vote of the ZBA provided that such amendment is reviewed at two successive meetings. ZBA forms are part of the Rules of Procedure and may be adopted or amended in the same manner as the Rules themselves.