



Zoning Board of Adjustment
Town of Fremont, New Hampshire

Rules of Procedure
Amended April 25, 2023

AUTHORITY

1. These Zoning Board of Adjustment (ZBA) 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 the Town of Fremont, New Hampshire.

OFFICERS

1. A **chair** shall be elected annually by a majority vote of the board in the month of March. 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.
2. A **vice-chair** shall be elected annually by a majority vote of the board in the month of March. The vice-chair shall preside in the absence of the chair and shall have the full powers of the chair on matters which come before the board during the absence of the chair.
3. All officers shall serve for one year and shall be eligible for re-election.
4. The Land Use Administrative Assistant, or board clerk, for the Town of Fremont shall maintain a record of all meetings, transactions, and decisions of the board, and perform such other duties as the board may direct by resolution.

MEMBERS AND ALTERNATES

1. 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.
2. At meetings, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions, and interact with other board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Once the board moves into deliberations, alternates shall remove themselves from the table and no longer participate with the board. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.
3. 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 chair and/or the Land Use Administrative Assistant as soon as possible. Members, including the chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

MEETINGS

1. **1. Regular meetings** shall be held at the basement meeting room in the Fremont Town Hall at 7:00 pm on the fourth Tuesday of each month. Other meetings may be held on the call of the chair provided public notice and notice to each member is given in accordance with [RSA 91-A: 2, II](#).
2. **2. Quorum.** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
 - a. The chair will make every effort to ensure that a full five-member board is present for the consideration of any appeal.
 - b. If any regular board member is absent from any meeting or hearing, or disqualifies himself 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. Alternates shall be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the chair shall select the alternate who has not been activated for the longest time and if there are two or more alternates who meet this criterion, the alternate who has served the longest shall be activated. If two or more alternates still both meet those criteria, the selection shall be made by the flip of a coin.
 - d. If there are less than five members (including alternates) present, the chair shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present, that shall not solely constitute grounds for a rehearing should the application fail.

1. Disqualification.

If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in [RSA 673:14](#), he shall notify the chair as soon as possible so that an alternate may be requested to sit in his place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the board may request the board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.

Either the chair or the member disqualifying himself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself from the board table during the public hearing and during all deliberation on the case.

4. Order of Business.

The order of business for regular meetings shall be as follows:

- a. Call to order by the chair
- b. Minutes
- c. Continued business
- d. Public hearing
- e. New business
- f. Administration
- g. Other business
- h. Adjournment

(Note: Although this is the usual order of business, the chair may wish to hold hearings immediately after the roll call in order to accommodate the applicant or public).

APPLICATION/DECISION

1. Applications.

- a. Each application for a hearing before the board shall be made on forms approved by the board and shall be presented to the clerk of the board of adjustment who shall record the date of receipt over his or her signature. Appeals from an administrative decision taken under [RSA 676:5](#) shall be filed within thirty (30) days of the decision. At each meeting, the board's clerk shall present to the board all applications received by him or her at least seven (7) days before the date of the meeting.
- b. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.
- c. The board's clerk or Land Use Administrative Assistant, or designee, shall be permitted to revise the administrative portions of all forms as necessary, including but not limited to items such as fee schedule, checklists, and formatting.

2. Public Notice.

- a. Public notice of public hearings on each application shall be given in the Union Leader newspaper and shall be posted at the Fremont Town Hall and the Fremont Post Office not less than five (5) days before the date fixed for the hearing. Although not required, public notice should also be posted on the Town's website in a prominent location on the homepage of the website, or such that it may be located via a link found prominently on the homepage of the website. 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.
- b. Personal notice shall be made by verified mail in accordance with RSA 676:7 and 21:53 to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to town departments including road agent, police and fire chiefs, historian, building inspector, code enforcement officer, select board, town administrator, and conservation commission. Notice may also be given to the planning board, city/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 may be made on forms provided for this purpose.
- c. The applicant shall pay for all required notices costs in advance.

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

- a. The chair shall call the hearing in session and ask for the board clerk's report on the first case.
- b. The board's clerk shall read the application and report on how public notice and personal notice were given.
- c. Members of the board may ask questions at any point during testimony.
- d. 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 of a party to the case.
- e. Any member of the board, through the chair, may request any party to the case to speak a second time.
- f. Any party to the case who wants to ask a question of another party to the case must do so through the chair.
- g. The applicant shall be called to present his appeal including facts provided in the application in support of granting the appeal.
- h. Those appearing in favor of the appeal shall be allowed to speak.
- i. Those in opposition to the appeal shall be allowed to speak.
- j. The applicant and those in favor shall be allowed to speak in rebuttal.
- k. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- l. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chair not later than 3 days prior to the public hearing.

- m. 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.
 - n. Members of the board will review the checklist for the given application (i.e., 5 criteria for request of variance).
 - o. The chair, or designee, 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.
 - p. The hearing on the appeal shall be declared closed and the next case called up.
4. **Decisions.** The board shall begin formal consideration and shall approve or disapprove applications within 90 days of the date of receipt. The board shall issue a final written decision which either approves, approves with conditions, or disapproves an application including written findings of fact. The decision will be made available for public inspection and sent to the applicant within five (5) “business days” as required by [RSA 676:3](#).
5. **Written Findings of Fact** - By statute RSA 676:3, I, the board should also provide written findings of fact reasons for approval or disapproval. In general, the board should be clear with identifying how the application meets their regulation and checklist requirements for the findings of fact portion of the approval. When an application is approved with conditions, those conditions must be included in the written decision and included with or on any plat recorded to memorialize an approval as contained in RSA 676:3, III. Findings of fact should not replace conditions of approval.

For denials, a local land use board should consider what are the things about the application that is preventing it from saying yes. These things should be anchored in the standards of the regulations and describe how the application does not meet the standards of the regulations; but may also include the exercise of independent judgment, experience, and knowledge of the area by the board.

The findings of fact should be complete, so that (1) a reviewing court knows all of your reasons, and (2) the applicant has instructions if they want to try a second time.

The board may enlist town counsel to aid in the issuance of the findings of fact. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal unless other grounds exist for disapproval.

6. **Voting.** The chair 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. Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The board must put forth a new motion to affirmatively set forth a decision.
7. **Motions for Rehearing.** If the board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

RECORDS

1. The records of the board shall be kept by the board’s clerk/Land Use Office and made available for public inspection at the Fremont Town Hall in accordance with [RSA 673:17](#).

2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made. [RSA 676:3](#).
3. Minutes of all meetings including names of board members, persons appearing before the board, and a brief description of the subject matter shall be open to public inspection within 5 business days of the public meeting. [RSA 91-A: 2 II](#).

AMENDMENTS

These rules of procedure may be amended by a majority vote of the members of the board provided that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the city or town clerk and be available for public inspection pursuant to RSA 676:1.

WAIVERS

Any portion of these rules of procedure may be waived in such cases where, in the opinion of the board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

JOINT MEETINGS AND HEARINGS*

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

CHECKLIST

Is the application an appeal from an Administrative Order? If so...

- What is the meaning of the provision in question?
- Does the appellant meet the terms?

Is the application a request for a Special Exception? If so...

- Is the exception allowed by the ordinance?
- Are the specified conditions present under which the exception may be granted?

If the answer to both of these questions is yes, the exception **must** be granted. “If the board finds that all the requirements are met, it must grant the special exception. However, if the applicant is not able to demonstrate that each of the requirements are met, the ZBA must deny the special exception.” [*Jensen’s v. City of Dover*](#), 130 N.H. 761 (1988).¹²

Is the application a request for a variance? If so...

- Would granting the variance not be contrary to the public interest?
- Could the variance be granted without violating the spirit of the ordinance?
- Would granting the variance do substantial justice?
- Could the variance be granted without diminishing the value of abutting properties?
- Would denial of the variance result in unnecessary hardship to the owner?

If the answer to all five questions is yes, the variance should be granted. If the applicant fails to meet any ONE of the five variance requirements, it cannot be legally granted and should be denied.

Is the application a request for an Equitable Waiver of Dimensional Requirements?

- Does the request involve a dimensional requirement, not a use restriction?
- If the answer is yes, the board can move on to the specific findings to grant the waiver.
- Has the violation existed for 10 years or more with no enforcement action, including written notice, commenced by the town?

or

- Was the nonconformity discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, and was the violation not an outcome of ignorance of the law or bad faith but as the result of a legitimate mistake?

If the answer is yes to either, the board can move on to the additional findings to grant the waiver:

- Does the nonconformity not constitute a nuisance or diminish the value or interfere with future uses of other property in the area?
- Would the cost of correction far outweigh any public benefit to be gained?

If the answer to each of the above is yes, the board shall grant an equitable waiver.

The power to grant appeals should be treated with respect and with the knowledge that the task of the board of adjustment is to correct inequities, not to create them.

¹² The Pit and The Pendulum, Attorneys Bates and Mitchell, New Hampshire Municipal Association, Municipal Law es, Lecture #3, 1995, pg. 16.