

Revised DRAFT: 13 September 2010  
**Tamworth Zoning Board of Adjustment**  
*Rules of Procedure*

**Authority**

These rules of procedure are adopted under the authority of New Hampshire RSA 676:1, the combined town land use ordinances and maps of the Town of Tamworth.

**Membership**

1. State laws require local residency for membership on the board.
2. The Tamworth Zoning Board of Adjustment shall maintain a membership of five.
3. Qualifications for the ZBA are the same for any other position of trust in a municipality: time, interest in serving, impartiality, and a willingness to learn, understand, and use the process.

**Officers**

1. A chairperson shall be elected annually by the majority vote of the board in the month of January. The Chair shall preside over all meetings and hearings, appoint such committees as directed by the board and shall sign all documents in conjunction with board business.
2. A vice-chair shall be elected annually by a majority vote of the board in the month of January. 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 such an absence.
3. A clerk shall be elected annually by a majority vote of the board in the month of January. The clerk 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. Secretarial duties may be delegated to a staff member.
4. All officers shall serve for one year and shall be eligible for re-election.
5. Up to five alternate members shall be appointed, as provided for by the local legislative body, to serve whenever a regular member of the board is unable to fulfill his or her responsibilities.

**Meetings**

1. Regular meetings shall be held at the Town Office at 7pm on the second Tuesday of each month. Should this meeting time not be feasible for the majority of the board, another regular meeting date and time may be chosen, by majority vote, at a regularly-scheduled meeting. Other meetings may be held on call of the chair provided public notice and notice to each member is given at least 48 hours-- excluding Sundays and holidays--in advance of such a meeting.
2. 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.

If any regular board member is absent from any meeting or hearing, or disqualifies himself or 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.

### **Disqualification**

1. If any member finds it necessary to disqualify himself or herself from sitting in a particular case, as provided in RSA 673:14, he or she shall notify the chair as soon as possible so that an alternate may be requested to sit. 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.
2. Either the chair or the disqualified member, before the beginning of the public hearing on the case, shall announce the disqualification. The disqualified member shall be absented from the board table during the public hearing and during all deliberation on the case.

### **Order of Business**

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

- a. roll call by the clerk
- b. minutes of previous meeting
- c. unfinished business
- d. public hearing
- e. new business
- f. communications and miscellaneous
- g. adjournment

*Note: although this is the usual order of business, the board may wish to hold hearings immediately after the roll call in order to accommodate the public.*

### **APPLICATION AND DECISION**

#### **Applications**

1. Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the clerk of the board of adjustment who shall record the date of receipt with his or her signature.
2. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.

3. At each meeting , the clerk shall present to the board all applications received by him or her at least 14 days before the date of the meeting.
4. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.

### **Public Notice**

1. Public notice of public hearings on each application shall be given in the Conway Daily Sun and shall be posted at the Town Office not fewer than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, a description of the property to include tax map ID, action desired by the applicant, provisions of the 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 fewer than five (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.
3. The applicant must pay for costs of all required notices in advance.

### **Public Hearing**

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

1. The chair shall call the hearing in session and ask for the clerk's report on the first case.
2. The clerk shall read the application and report on how public notice and personal notice were given.
3. The members of the board may ask questions at any point during testimony.
4. Each person who appears shall be required to state his or her name and address and to indicate whether he is a party to the case, or an agent or counsel of a party to the case.
5. Any party to the case who wants to ask a question of another party to the case must do so through the chair.
6. The applicant shall be called to present his appeal and those appearing in favor of the appeal shall be allowed to speak.
7. Those in opposition to the appeal shall be allowed to speak.
8. The applicant and those in favor shall be allowed to speak in rebuttal.
9. Any person who wants the board to compel the attendance of a witness shall present a written request to the chair not later than three (3) days prior to the public hearing.
10. 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 town ordinance and state law.
11. The chair 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.
12. The hearing on appeal shall be declared closed and the next case called up.

13. The ZBA shall enter into deliberation, reserving the right to seek additional information as necessary.

### **Decisions**

The board will approve, approve with conditions, deny the appeal, or defer its decision. Notice of decision or deferral will be made available for public inspection within five (5) business days of the vote, as required by RSA 676:3. If the appeal is denied or deferred, the notice shall include the reasons therefore.

### **Records**

The records of the board shall be kept by the clerk and made available for public inspection at the Tamworth Town Clerk's office.

1. Final written decisions shall be placed on file and available for public inspection within five (5) business days after the decision is made per RSA 676:3.
2. Minutes of all meetings, including names of board members, persons appearing before the board, and a brief description of the subject matter before the board, shall be open to public inspection within five (5) business days of a request.

### **Amendments**

These rules of procedure may be amended by the majority vote of the members of the board provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken.

### **Joint Meetings and Hearings**

1. RSA 676:2 provides that the board of adjustment may hold joint meetings or hearings with other town "land use boards", including the planning board, and that each board shall have discretion as to whether or not to hold a joint meeting.
2. Joint business meetings with other land use boards may be held at any time when called jointly by the chairs of both 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 chair 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 on these conditions.