

Town of Kingston
163 Main Street
Kingston, New Hampshire 03848

Kingston
Zoning Board of Adjustment

By-laws, Rules of Procedure and General Governing Rules

As adopted August 11, 2022
Amended October 19, 2023

By-laws, Rules of Procedure, and General Governing Rules
Zoning Board of Adjustment
Town of Kingston, NH

The Kingston Zoning Board of Adjustment shall be governed by the provisions of all State statutes, local laws, ordinances and these bylaws adopted by the Board as provided in RSA 676.1

1.0 Membership

The Kingston Zoning Board of Adjustment shall consist of five (5) members unless that number shall be changed by State law. (RSA 673:3)

- 1.1 The term of an elected Zoning Board of Adjustment member shall be three (3) years; the Board shall be staggered so that no more than two (2) elections occur annually, except when required to fill vacancies. (RSA 673:5)
- 1.2 An elected Zoning Board of Adjustment may appoint up to five (5) alternate members for a term of three (3) years each, which shall be staggered in the same manner as elected members pursuant to RSA 673:11. (RSA 673:6, II)
- 1.3 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 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.
- 1.4 Disqualification of Board member
 - A. No Zoning Board of Adjustment member shall participate in deciding or shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member had direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons of disqualification do not include facts involved gained in the performance of the member's official duties.
 - B. When uncertainty arises to the question of conflict in a particular circumstance, the Board shall, upon the request of that member or other Board member, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any public hearing. Such a vote shall be advisory and non-binding and may not be requested by persons other than Board members unless such local ordinance has been adopted by the vote of the Town.

2.0 Officers and Duties

The Officers of the Board shall be the Chairperson and the Vice Chairperson, and shall be elected annually at the first scheduled Zoning Board of Adjustment meeting following the March Town elections. Any member may nominate him/herself or any other member of the Board for either

position. All nominees will be accepted for a position before a vote is taken. In the event that a tie vote occurs between the top two nominees, a re-vote will be taken with only those two nominees considered so that each officer shall be chosen by majority vote of those Full Board members present. The term of Chairperson and Vice-Chairperson shall be one year and both shall be eligible for re-election. All officers may be elected to succeed themselves.

2.1 Chairperson

The Chairperson shall conduct meetings and hearings, be the official spokesperson for the Board, and designate alternates (to replace absent members at a meeting). The Chairperson may call special meetings, provided that at least forty-eight (48) hours notice shall be given each member before a meeting is held, providing that each member is not out of Town, or otherwise unreachable. The Chairperson shall be required to call a meeting within ten (10) days of receipt of a written request from any two (2) members of the Board. The Chairperson shall have the authority to sign a Certified Record. The Chairperson may vote in all cases where (s)he does not have a conflict of interest.

2.2 Vice-Chairperson

The Vice-Chairperson shall act in the absence of the Chairperson, and in cases where the Chairperson may be an abutter, or have a conflict of interest with an appellant. The Vice-Chairperson is authorized to sign a Certified Record in cases where the Chairperson is unavailable.

3.0 Quorum

A majority of the membership of the Zoning Board of Adjustment shall constitute a quorum necessary in order to transact business at any meeting of the Board. (673:10, III)

4.0 Alternate Members

4.1 Designation of Alternate Members (RSA 673:11)

Whenever a regular member of the Zoning Board of Adjustment is absent or disqualifies himself or herself, the Chairperson shall designate an alternate, if one is present, to act in the absent member's place. While rotation of alternates is recommended, the Chair will continue to have discretion of designating an alternate (per RSA 673:11) and take into account items such as, but not limited to, attendance and continuity of membership for continued public hearings.

4.2 Participation of Alternate Members

A. Alternate Board members may participate in the Zoning Board of Adjustment meetings/hearings.

B. Only an Alternate Board Member designated to act in the absence of a Full Board member may deliberate, make or second motions, or vote on actions during that meeting.

- C. The Chairman shall clarify those members who are voting members by introducing the voting members to the public not only at the beginning of the meeting but also at the start of each hearing during the meeting in which there is a change in status of voting members.
- D. An Alternate Board Member who is designated to serve as a full voting member at the start of a hearing that is continued to the following meeting, shall if possible, continue to serve as the voting member through the conclusion of said hearing.

5.0 Filling Vacancies in Membership (673:12)

Vacancies in the membership of the Zoning Board of Adjustment, other than through the expiration of a term, shall be filled as follows:

- 5.1 For an elected Board member, by appointment by the remaining Zoning Board of Adjustment members until the next regular municipal election at which time a successor shall be elected to either fill the unexpired term or start a new term, as appropriate.
- 5.2 For an alternate Board member, the Zoning Board of Adjustment members will appoint to fill the term.

6.0 Authority of the Zoning Board of Adjustment

- 6.1 Appeal from Administrative Decision
- 6.2 Approval of Special Exception
- 6.3 Grant of Variance
- 6.4 Grants of Equitable Waiver of Dimensional Requirement

7.0 Hearings and Meetings

7.1 Hearings. The Zoning Board of Adjustment will hold a hearing within 60 days following receipt of an application for a Variance, Special Exception, Equitable Waiver of Dimensional Requirement, or notice of an appeal of an Administrative Decision. With rare exceptions, the hearing will be scheduled on the second Thursday of the month, and completed applications are due by noon on the third Wednesday of the preceding calendar month, in the Selectmen's office. (Amended 10/19/2023)

7.2 Meetings. The ZBA does not have regularly scheduled meetings. If the need for a meeting arises when no public hearing is scheduled, the Chairperson may call for a meeting (or shall call a meeting upon written request of at least two other members) provided 48 hours notice is given to members, and at least 24 hours public notice is given via posting at Town Hall and on the Town website.

8.0 Procedure for Application

8.1 Applicants shall provide a completed application that includes six copies of supporting materials and documents, a list of abutters, and holders of conservation, preservation, or agricultural preservation restrictions (on the subject lot), three copies of abutter mailing labels and associated

application fees in order for their application to be complete. Applications are available through the Selectmen's office or on the Town's web site.

8.2 Additional requirements per the following requests:

A. Appeal from Administrative Decision

- i. Must be filed within 30 days of the decision being appealed.
- ii. Must have standing

B. Approval of Special Exception

- i. Application shall be in accordance with the general or specific rules contained in the Ordinance.
- ii. Three questions must be answered to decide whether or not a special exception can be legally granted:
 - a. Is the use ordinarily prohibited in the district?
 - b. Is the use specifically allowed as a special exception under the terms of the ordinance?
 - c. Are the conditions specified in the ordinance for granting the exception met in the particular case?

C. Grant of Variance

- i. Must be filed within 30 days of a decision requiring the variance request.
- ii. The following criteria will be used to consider the request for granting the variance:
 - a. The variance will not be contrary to the public interest.
 - b. The spirit of the ordinance is observed.
 - c. Substantial justice is done.
 - d. The values of the surrounding properties are not diminished.
 - e. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

D. Grants of Equitable Waiver of Dimensional Requirement; will be in accordance with RSA 674:33-a:

- i. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:
 - a. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value:
 - b. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner,
 - c. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
 - d. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

ii. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon any municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

9.0 Notice of Public Hearing

9.1 When an application is received at Town Hall, the Chairperson shall be notified promptly of the application. Should it be possible that the application will be determined to have regional impact, the Chairperson may elect to call a meeting of the Board to make that determination prior to a public hearing being scheduled. Should the Board decide that the application has regional impact, the procedures required by RSA 36:57 will be followed.

9.2 Upon receipt of a completed application, the Zoning Board of Adjustment Board will, at least five (5) days prior to the hearing date, notify the applicant, the abutters, and holders of conservation, preservation, or agricultural preservation restrictions (on the subject lot) by certified mail, return receipt requested, of the date upon which the application will be formally heard by the Board. Notice to the general public shall also be given at the same time by posting at the Town Hall, and on the Town's website, and in a newspaper of general circulation, preference to be given to a freely distributed paper which goes to all households in Kingston. While five days' notice is the minimum required by law, every effort will be made to insure notice is given at least ten (10) days prior to a hearing. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal and shall also be given to any other Town boards and departments (such as the Planning Board, Conservation Commission, or HDC) deemed by the Board to have special interest. (RSA 676:7)
Per RSA 674:33, the ZBA shall begin formal consideration and shall approve or disapprove an application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If the ZBA determines that it lacks sufficient information to make a final decision on an application *and the applicant does not consent to an extension*, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.

10.0 Hearing Order of Business

1. Call of the meeting to order, statement of time and roll call.
2. Board business.
3. Hearing of the agenda

3.a. -For each development application before the Board, a determination of Development of Regional Impact (DRI) shall be made in accordance with RSAs 36:54 through 36:58:

A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.

"Development of regional impact" means any proposal before a local land use board which in the determination of such local land use board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:

I. Relative size or number of dwelling units as compared with existing stock.

II. Proximity to the borders of a neighboring community.

III. Transportation networks.

IV. Anticipated emissions such as light, noise, smoke, odors, or particles.

V. Proximity to aquifers or surface waters which transcend municipal boundaries.

VI. Shared facilities such as schools and solid waste disposal facilities.

Upon determination that a proposed development has a potential regional impact, the local land use board having jurisdiction shall afford the regional planning commission and the affected municipalities the status of abutters as defined in RSA 672:3 for the limited purpose of providing notice and giving testimony.

Not more than 5 business days after reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made. The local land use board shall, at the same time, submit an initial set of plans to the regional planning commission, the cost of which shall be borne by the applicant.

At least 14 days prior to public hearing, the local land use board shall notify, by certified mail, all affected municipalities and the regional planning commission of the date, time, and place of the hearing and their right to testify concerning the development.

4. For each hearing, the request is read aloud by the Chairperson, followed by an explanation from the applicant/appellant.

5. Members of the Board may ask questions of the applicant at any time.

6. Comments from the public will be heard, and the applicant will be given an opportunity to respond. Any person wishing to speak will be asked to come forward, state his/her name and address for the record. Any questions will be directed to the Chairperson, not the applicant directly.

7. The Chairperson shall present a summary setting forth the facts of the case and claims made in favor or opposition. Opportunity shall be given for corrections from the floor.

8. The public hearing of the case shall be declared closed.

9. The Board may begin deliberations and vote on a motion, or defer to a later date, but no more than 30 days from the hearing date.

9.a. Deliberation on the five criteria for variances may be done with the aide of a variance worksheet, preferably the "Individual Board Member Variance Worksheet" provided in Appendix C of the NH Office of Strategic Initiatives' Zoning Board Handbook; all voting will be done by voice vote on each of the five criteria. All five criteria must pass in order for the variance to be granted. Each member's vote on each criterion will be recorded in the minutes, along with the Board's reasons for each of the five decisions.

9.b. Deliberation and voting on Special Exceptions shall follow the guidelines in the ordinance for the specific Special Exception being requested.

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10. In accordance with RSA 676:3 findings of fact as agreed upon during the hearing will be recorded for inclusion in the minutes and notice of decision.

11. Hear the next case, if any.

12. Adjournment

10.1 Board Business/hearings not in progress by 10:00 PM will be continued to the Board's next meeting; the meeting will adjourn no later than 10:30 PM. The above statement will appear on all agendas.

11.0 Decision Requirements

11.1. A majority vote is required to approve any request or to pass any motion. Three Board members constitute a quorum of the Board. If only three members are present, all members must concur for a decision to be valid. If fewer than five members are present, the applicant shall be given the option to request a continuance to the next hearing date to allow for a full five-member Board to be present in making the decision.

11.2 A motion for a decision will be made that includes specifically what is approved or denied, reasons, and any conditions of approval.

11.3. A notice of decision will be issued within five business days, and e-mailed and mailed to the applicant/appellant that includes (1) the motion that was passed, (2) if application was denied, the reasons must be explained, (3) any conditions of approval, clearly explained, (4) per RSA 676.3, findings of fact made by the Board supporting its decision(s), and (5) any deadlines or milestones required, including the time allowed to meet any conditions precedent, and the date of expiration of a Special Exception or Variance (two years from the date of decision). Whenever a plat is recorded to memorialize an approval issued by the board, the final written decision, including all conditions of approval, shall be recorded with or on the plat. (RSA 676:3) A copy of the decision will be delivered to the Building Inspector, Planning Board, and any other board or department affected by the decision, and filed with the Town Clerk and Town Assessor.

11.4. There is a thirty-day appeal period for all decisions made by the Zoning Board of Adjustment.

11.5. The Zoning Board of Adjustment may require additional information or professional review; an escrow may be required to be established to pay for any additional review.

11.6 Request for rehearing. Upon receipt of a motion for rehearing, a public meeting shall be scheduled within 30 days to decide whether to grant or deny the motion. Rehearings may be granted due to (1) a technical error in the original hearing, or (2) new information comes forward that was not available at the original hearing. All Board members will be sent a copy of the motion at least 48 hours prior to the meeting. If the Board has a public hearing scheduled at least 48 hours after, but within 30 days of receipt of the motion, the public meeting can be added to the agenda for that hearing date. The notice of the public meeting shall be posted at least 24 hours prior to the meeting time. (RSA 677:2, 3)

11.7 Board-initiated reconsiderations. Within the 30 day appeal period, the Board may vote on a motion to rehear its own decision for the reasons listed in paragraph 11.6.

12.0 Revision of the Plan

Substantial revisions of the plans by the applicant, other than in response to requests from the Board, will be treated as new applications and necessitate denial of the original plan or request by the applicant for a withdrawal.

13.0 Joint Meetings and Hearings

13.1 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 or not to hold a joint meeting with any other land use board.

13.2. Joint business meetings with any other land use board may be held at any time when called jointly by the chairperson of the two boards.

13.3. 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 chairperson 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. (Amended 10/19/2023)

14.0 Recorded Meetings

Recordings of the meetings, if any, are kept only until the printed minutes of that meeting are accepted by the Board, at which time the approved minutes are the official record of the meeting and the recordings may be destroyed.

Requests to preserve the recordings of a Zoning Board of Adjustment meeting/hearing need to be put in writing and presented to the Selectmen’s office prior to acceptance of the minutes of that meeting/hearing; “in writing” includes email requests.

15.0 By-law Revisions

These by-laws may be revised by first posting such revisions along with the usual monthly postings of agenda and business followed by a majority vote of the members present at a regular monthly meeting. Minor (textural) changes from the posting may be made at the meeting.

16.0 Final Posting of By-laws

These by-laws, once enacted, will be filed with the Kingston Town Clerk and will be available for public inspection as provided in RSA 676:1.

17.0 Severability

The unenforceability or invalidity of one or more clauses in these By-laws and Rules shall not have an effect on any other clause in the By-laws and Rules. If it is possible, any unenforceable or invalid clause in these By-laws and/or Rules shall be modified to show the original intent of the ZBA.