

## 1. Authority

- a. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated [Chapter 676:1](#), and the zoning ordinance and map of the Town of Carroll.

## 2. Officers

- a. A **chairperson** shall be elected annually by a majority vote of the board in the month of April. The chairperson shall preside over all meetings and hearings, appoint such committees as directed by the board and shall affix their signature in the name of the board.
- b. A **vice-chairperson** shall be elected annually by a majority vote of the board in the month of April. The vice-chairperson shall preside in the absence of the chairperson and shall have the full powers of the chairperson on matters which come before the board during the absence of the chairperson.
- c. A **secretary** is hired by the selectmen and is not required to be a resident of the town. The secretary 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.
- d. All officers shall serve for one year and shall be eligible for re-election.

## 3. Members and Alternates

- a. **Board Members (Five)** – Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any board 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.
- b. **Alternates (up to five)** – In accordance with [RSA 673:6](#), the board may appoint up to 5 alternate members for a term of 3 years each, which shall be staggered in the same manner as elected members. Alternates 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 their responsibilities.
  - i. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chairperson 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 chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

- c. **Vacancies** – In accordance with [RSA 673:12](#), vacancies in the membership of the board shall be made by the remaining board 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.

#### 4. Meetings

- a. **Regular meetings** shall be held at Town Hall on the second Thursday of each month when there is business before the board.
  - i. Meetings will be held starting at 6:00 p.m. or 7:00 p.m. as noticed.
  - ii. Meetings may run until 10:00 p.m. at which time the chairperson, in consultation with present members of the board, may choose to adjourn the meeting or complete items on the agenda.
- b. **Other meetings** may be held on the call of the chairperson provided public notice and notice to each member is given at least 72 hours excluding Saturdays, Sundays, and legal holidays prior to such meetings.
- c. **Notice:** A notice of the time and place of each public or nonpublic session shall be posted on the Town’s website and Town Hall at least 24 hours prior to the meeting (excluding Sundays and legal holidays), except in an emergency.
  - i. An **emergency** shall mean a situation where immediate undelayed action is deemed to be imperative by the chairperson or presiding officer
  - ii. Notice of the time and place of an emergency meeting shall be posted as soon as is practicable and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting.
- d. **Quorum** – A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
  - i. [RSA 674:33](#) 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.
  - ii. If any regular board member is absent from any meeting or hearing, or disqualifies themselves from sitting on a particular case, the chairperson 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.

- iii. If there are less than five members (including alternates) present, the chairperson 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. If the applicant opts to postpone due to less than a full board present, the board shall announce the time, date, and location of the continued hearing. If the board cannot determine the time, date, and location of the continued hearing, the board shall provide new notice to all parties pursuant to [RSA 676:7](#).

e. **Remote Attendance:**

- i. Members may participate in a meeting by telephone or other electronic communication—but only if the member’s attendance is “not reasonably practical.” The reason that in-person attendance is not reasonably practical must be stated in the minutes of the meeting. Except in an emergency, at least a quorum of the public body must be physically present at the location of the meeting.
    - 1. An “emergency” means that “immediate action is imperative, and the physical presence of a quorum is not reasonably practical within the period of time requiring action.” The determination that an emergency exists is to be made by the chairperson or presiding officer, and the facts upon which that determination is based must be included in the minutes.
  - ii. Each part of the meeting must be audible “or otherwise discernable” to the public at the physical location of the meeting. All members of the public body must be able to hear and speak to each other simultaneously during the meeting and must be audible or otherwise discernable to the public in attendance. No meeting may be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.
  - iii. All votes taken during such a meeting must be by roll call vote.
  - iv. Any member participating remotely must identify anyone present at the remote location.
- f. **Disqualification** -- If any member finds it necessary to disqualify themselves from sitting in a particular case, as provided in [RSA 673:14](#), they shall notify the chairperson as soon as possible so that an alternate may be requested to sit in their 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.

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should step down (recuse themselves) board members should review the questions which are asked of potential jurors to

determine qualification ([RSA 500-A:12](#)). A potential juror may be asked whether they:

1. Expect to gain or lose upon the disposition of the case;
2. Are related to either party;
3. Have advised or assisted either party;
4. Have directly or indirectly given an opinion or formed an opinion;
5. Are employed by or employs any party in the case;
6. Are prejudiced to any degree regarding the case; or
7. Employ any of the counsel appearing in the case in any action then pending in the court.

The disqualification shall be announced by either the chairperson or the member disqualifying themselves before the beginning of the public hearing on the case. The disqualified member shall absent themselves from the board table during the public hearing and during all deliberations on the case.

- g. **Order of Business** – The order of business for regular meetings shall be as follows:

- i. Call to order by the chairperson
- ii. Roll call by the secretary.
- iii. Minutes of previous meeting
- iv. Unfinished Business
- v. Public hearing
- vi. New business
- vii. Communications and miscellaneous
- viii. Other business
- ix. Adjournment

[NOTE: Although this is the usual order of business, the board may wish to hold the hearings immediately after the roll call in order to accommodate the public.]

## 5. Application/Decision

### a. Applications

- i. Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the secretary of the board of Adjustment who shall record the date of receipt over their signature.
- ii. Appeals from an administrative decision taken under [RSA 676:5](#) shall be filed within 30 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the board.
- iii. For each hearing, the secretary shall share all materials with members of the board electronically or, upon request, in print at least three (3) days prior to the meeting.

### b. Forms:

- i. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these Rules of Procedure.

### c. Notice of Public Hearings

- i. In accordance with [RSA 676:7](#), public notice of public hearings on each application shall be placed in a newspaper of general circulation in the area and will be posted on the Town Website and on the Town Hall Bulletin Board not less than five (5) calendar days before the dated fixed for the hearing.
  - 1. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provision of the zoning ordinance concerned, the type of appeal being made and the date, time and place of the hearing.
- ii. Applicant and abutter notice shall be made by certified mail return receipt to the applicant and all abutters not less than five (5) calendar days before the date of hearing. Said notice shall contain the same information as the public notice.
- iii. Cost of all required notices must be paid for, in advance, by the applicant.
- d. **Public Hearing** – The conduct of public hearings shall be governed by the following rules:
  - i. The chairperson shall call the hearing in session and ask for the secretary’s report on the case.
  - ii. The secretary shall report on the public and personal notices and read the application.
  - iii. Members of the board may ask questions at any point during testimony.
  - iv. Each person who appears shall be required to state their name and address and indicate whether they are a party to the case or an agent or counsel of a party to the case.
    - 1. In the case an agent or counsel is acting for an owner, a signed letter from the owner authorizing the “agent” or “counsel” to act in their stead is required.
    - 2. In the case an agent or counsel is acting for an applicant, a signed letter from the applicant authorizing the “agent” or “counsel” to act in their stead is required.
    - 3. Members of the public, including abutters, may be limited by the chairperson to a five-minute presentation.
  - v. Any member of the board may request, through the chairperson, any party to the case to speak a second time.
  - vi. Any party to the case who wants to ask a question of another party to the case must do so through the chairperson.
  - vii. The applicant shall be called to present their appeal.
  - viii. Those appearing in favor of the appeal shall be allowed to speak.
  - ix. Those in opposition to the appeal shall be allowed to speak.
    - x. The applicant and those in favor shall be allowed to speak in rebuttal.
    - xi. Those in opposition to the appeal shall be allowed to speak in rebuttal.
  - xii. Any person who wants the board to compel the attendance of a witness shall present their request in writing to the chairperson not later than 3 days prior to the public hearing.

- xiii. The Board of Adjustment will hear with interest any evidence that pertains to the fact of the case or how the facts relate to the provisions of the zoning ordinance and state zoning law.
  - xiv. The chairperson 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.
  - xv. The hearing on the appeal shall be declared closed and the next case called up.
  - xvi. A final public hearing will neither be posted nor held until payment has been received by the ZBA. Consultant fees to be billed after proceedings (if necessary) when the amount due is known.
- e. **Decisions** – The board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal.
- i. If the application is not approved, the notice shall include the reasons therefore.
  - ii. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.
  - iii. Notice of the decision will be sent to the applicant by certified mail return receipt.
  - iv. The written decision containing reasons for the decision and all conditions of approval shall be placed on file in the board’s office and shall be made available for public inspection within 5 business days of the vote, as required by [RSA 676:3](#).
  - v. Notice shall be posted in two locations; on the Town website and at Town Hall.
  - vi. The notice may also be given to the Planning Board, the Board of Selectmen, Town Clerk, Code Enforcement Officer and other town officials as determined by the board.
- f. **Voting** –The chairperson 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.
- g. **Reconsideration by the Board / Motions for Rehearing** -- The board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing if, in its opinion, good reason therefor is stated in the motion per [RSA 677:2](#).
- i. Within 30 days after any order or decision of the board, the appeal period, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the grounds therefor.
    - 1. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board

voted to approve or disapprove the application in accordance with [RSA 21:35](#); provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to [RSA 676:3, II](#), the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed.

- ii. Motions for Rehearing can only be received in the office of the board during normal business hours. See [Cardinal Development v. Winchester](#), 157 NH 710 (2008).
- iii. The board has the inherent authority to reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per [74 Cox Street, LLC v. City of Nashua](#) [September 21, 2007].
- iv. **Rehearing Procedures** – 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](#).

## 6. Records

- a. The records of the board shall be kept by the secretary and made available for public inspection at Town Hall in accordance with [RSA 673:17](#).
- b. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made in accordance with [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 with 5 business days of the public meeting. Minutes must be posted on the website in a consistent and reasonably accessible location in accordance with [RSA 91-A:2, II](#).
  - i. All minutes shall begin with the following disclaimer: “These minutes of the Town of Carroll Zoning Board of Adjustment have been recorded by its Secretary. Though believed to be accurate and correct, they are subject to additions, deletions, and corrections by the Board of Adjustment at a future meeting when the board votes its final approval of the minutes. They are made available prior to final approval to conform to the requirements of New Hampshire [RSA 91-A:2](#).”

## 7. Amendments

- a. These rules of procedure shall be adopted or amended by a majority vote of the members of the board provided that such new rules or amendments are proposed at a meeting prior to the meeting at which the vote is to be taken and shall be

placed on file with the town clerk and available for public inspection in accordance with [RSA 676:1](#).

## 8. Waivers

- a. 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.

## 9. Joint meetings 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 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.
  - i. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter.
  - ii. 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.
  - iii. The provisions covering the conduct of the public hearings set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed.
  - iv. The other board shall concur in these conditions.
- d. **Order of Business for Joint Hearings**
  - i. Call to Order by the Chairperson.
  - ii. Attendance recorded by the Secretary for each board respectively and introduction of members of both boards by the Chairperson.
  - iii. Pledge of Allegiance.
  - iv. Explanation of reason for the joint meeting/hearing by the Chairperson
  - v. Review minutes of previous joint hearings(s).
  - vi. Reading of communications directed to the boards relating to the issues at hand.
  - vii. Hearings on applications at issue. Each applicant shall make a presentation before open discussion begins.
    1. All comments should be directed to the Chairperson.
    2. All members of each board shall be permitted to ask questions.
    3. Public comments shall be welcomed regardless of opinion on the matter.



4. Each person who speaks shall be required to state their name and address and indicate whether they are an interested party to the matter.
- viii. Other business.
- e. **Adjournment of a Joint Hearing**
  - i. The Chairperson shall indicate when the hearing is continued or adjourned.
  - ii. Once the joint hearing is adjourned, each board shall make its own decision, based on its specific criteria.