

**CITY OF ROCHESTER
ZONING BOARD OF ADJUSTMENT
BYLAWS**

(Adopted by the Zoning Board of Adjustment 6/10/2009 and amended through 8/12/2009)

ARTICLE I - Name and Function of Board

Section 1. Name. The Board shall be known as the Rochester Zoning Board of Adjustment, hereinafter sometimes referred to as the "Board".

Section 2. Function of the Board. The Rochester Zoning Board of Adjustment shall perform the duties assigned to zoning boards under the provisions of 674:33, 674:33-a, and 674:34 of the New Hampshire Revised Statutes Annotated relative to "Local Land Use Planning and Regulatory Powers".

Section 3. Authority of the Board. These By-Laws are adopted under the authority of New Hampshire revised Statues annotated, 1995, Chapter 676:1 and the Zoning Ordinances of the City of Rochester, New Hampshire.

ARTICLE II - Membership

Section 1. Membership and Terms. The Zoning Board of Adjustment shall consist of five (5) regular members appointed in accordance with the provisions of Section 74 of the Rochester City Charter, each to serve for a term of three (3) years.

The City Council in accordance with the provisions of Section 74 of the Rochester City Charter, may appoint up to, but not more than, five (5) Alternate members of the Zoning Board of Adjustment, each to serve for a term of three (3) years, in accordance with the provisions of Chapter 673:6, I(a) of the New Hampshire Revised Statutes Annotated as presently enacted or the corresponding provisions of any recodification or amendment of the New Hampshire Revised Statutes Annotated.

Section 2. Filling Vacancies in Membership. Vacancies in the membership of the Rochester Zoning Board of Adjustment, occurring other than through the expiration of a term of office, in accordance with the provisions of RSA. 673:12, shall be filled by the Rochester City Council in accordance with Section 74 of the Rochester City Charter, for the unexpired term.

Section 3. Designation of Alternate Members. Whenever a regular member of the Rochester Zoning Board of Adjustment is absent and/or is disqualified , the Chair shall designate an alternate, if one is present, to act in the absent member's place. At the discretion of the Chair, the designation of an alternate member to act in an absent member's place may be rotated for training purposes.

Section 4. Removal of Members. In accordance with the provisions of RSA. 673:13, after public hearing, appointed members and alternate members of the Rochester Zoning Board of Adjustment may be removed by the appointing authority upon written findings of inefficiency, neglect of duty or malfeasance in office.

ARTICLE III - Officers

Section 1. Officers and Term. The officers of the Rochester Zoning Board of Adjustment shall consist of a Chair and a Vice-Chair who shall be elected during the annual meeting in January for a term of (1) one year and shall be eligible for re-election. The person to be elected to Chair or Vice-Chair must be a regular Board member.

Section 2. Chair. The Chair shall be elected annually by a majority vote of the Board. He/She shall preside over all meetings and hearings, appoint such committees as directed by the Board, and carry out other duties appropriate for the chair.

Section 3. Vice Chair. In the absence of the Chair, the Vice-Chair shall preside at all meetings and hearings of the Board, and shall assume the duties of the Chair during such proceedings.

Section 4. Chain of Command. In the absence of the Chair, the order of succession shall be as follows:

- (a) Vice-Chair
- (b) A member elected by a majority of the members present at the meeting of the Board.

The person acting as Chair pursuant to this section shall assume the duties of the Chair.

Section 5. Vacancies Among Officers. Should the office of Chair or Vice-Chair become vacant, the Board shall elect a successor from its regular membership to serve the unexpired term of said office.

ARTICLE IV - Meetings of the Board

Section 1. Regular Meetings. Regular meetings of the Board shall be held on the second Wednesday of each month at such time and place as the Board shall designate in the official notice of such meeting posted and otherwise noticed pursuant to and in accordance with the provisions of Chapter 91-A of the New Hampshire Revised Statutes Annotated. In the event that such day is a legal holiday or for other good cause, the regular meeting of the Board shall be held on such other day as the Board shall designate.

Section 2. Special Meetings. Special meeting of the Board shall be held at the call of the Chair at such time and place as designated by the Chair provided public notices and notice to each member is given at least 24 hours (excluding Sundays and legal holidays) prior to such meeting. Special meetings of the Board may also be called by the Chair or Secretary upon written request of three regular (3) members, made to such officer in writing. Notice of any such special meeting shall be posted and otherwise noticed pursuant to and in accordance with the provision of Chapter 91-A of the New Hampshire Revised Statutes Annotated and such notice shall be mailed to all members and alternates of the Board at least five (5) days prior to the date of such meeting, unless circumstances require a shorter notice to such members.

Section 3. Annual Meeting. There shall be an annual meeting of the Board held at the end of the meeting in January each year unless otherwise scheduled by the Board. The meeting shall be held for the purpose of election of officers, review of reports, and the transaction of other appropriate business. Officers shall be elected by majority vote of the members present.

Section 4. Quorum. A 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 him/herself 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.

Section 5. Lack of Quorum. If a quorum is not present, the Chair may adjourn the meeting to a day and hour fixed by the Chair.

Section 6. Order of Business. The order of business for meeting shall be as follows:

1. Roll call by recording secretary
2. Minutes of previous meeting
3. Public hearing
4. New business
5. Unfinished business
6. Communications and miscellaneous
7. Adjournment.

(NOTE: Although this is the usual order of business, the Board may wish to hold the hearing immediately after the roll call in order to accommodate the public.)

Section 7. Postponements. All applicants will be allowed one (1) postponement of the hearing on its application, and shall notify the Planning Department in writing of its intent to postpone such hearing at least two days prior to the meeting at which its application is to be considered. If the applicant requests a second postponement of the hearing, the application will be considered to have been withdrawn and the applicant must file a new application with the Board in order to receive a hearing. The provisions of this paragraph shall not apply to any postponement requested by an applicant as a result of the inability of the Zoning Board of Adjustment to provide the applicant with a full five-member Board for the hearing on the application.

Section 8. Minutes. The recording secretary shall prepare a preliminary draft of the minutes, stamped "Preliminary" or "Draft", for presentation to the board. Once the Board has approved the minutes or approved the minutes with changes the recording secretary shall place a copy of the approved minutes, incorporating any changes, into a permanent file. The recording secretary shall sign his/her name on the minutes as the party drafting them and submitting them to the board.

Section 9. Manner of Voting. At the discretion of the Chair, or upon the request of any member, voting by the Board shall be by roll call vote, the results of which shall be recorded in the minutes.

Section 10. Disqualification of Member.

- (a) In accordance with the provision of RSA 673:14, no member of the Rochester Zoning Board of Adjustment 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 has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if such 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 for disqualification do not include exemption from services of juror or knowledge of the facts involved gained in the performance of the member's official duties.
- (b) When uncertainty arises as to the application of paragraph (a) above to a Board member in particular circumstances, the Board shall, upon the request of that member or another member of the Board, 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 required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than Board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.
- (c) Any member disqualified pursuant to this section shall absent him/herself from the Board table during the public hearing and during all deliberations on the matter in question. Such disqualification shall be noted in the minutes of the hearing.
- (d) In the event that any Zoning Board of Adjustment member is absent from more than three (3) meetings in one calendar year (unless the member has requested authorized leave which is

approved by the Chair or Vice-Chair for ZBA classes or unavoidable occurrences), the Zoning Board of Adjustment may recommend removal of that member per RSA 673:13.

Section 11. Resignation Procedure. Any member may resign as a member by submitting a resignation letter addressed to the Chair; confirmation of the Board by majority vote of the sitting City Council.

ARTICLE V - Miscellaneous

Section 1. Applications. Each application for a hearing before the board shall be made on forms provided by the Planning Department and shall be presented to the Planning Department to record the date of receipt.

The completed application must include "all necessary documents in support of the applicants case".

If the applicant is not the property owner, he/she must supply a note signed by the property owner stating his/her knowledge of the application being submitted to the Zoning Board of Adjustment. The property owner will receive a copy of the public hearing notice by certified mail along with the abutters.

(Amended 8/12/2009)

If the application is for relief to allow encroachment into a set back from a lot line, documentation must be presented demonstrating the certified lot line. At the discretion of the Zoning Board of Adjustment the case will be postponed (1) one month without additional monetary commitment from the applicant.

(Amended 8/12/2009)

The Zoning Board of Adjustment will not accept any application when the property is involved in litigation that would impact upon the consideration of the application.

If an application has been scheduled for a hearing but has missing, incorrect, or inaccurate information, such as a certified plot plan or septic design plans, such information must be received by the Planning Department at least (10) business days prior to the hearing.

If the information is not provided within the required time frame, the Zoning Board of Adjustment at its discretion may continue the hearing until the following month.

Section 2. Communications to Board. All communications to the Board, including applications, petitions, emails, (when specifically directed to the board or appropriate for the board's information, at the reasonable discretion of staff) or other referrals, shall be directed to the Planning Department and shall thereafter be provided to the Board by such Department.

Section 3. Site Visits. Visits to specific sites shall be announced and scheduled for a time and date set forth by the Chair. Site visits are an extension of the board meeting and are open to the public. If there is a quorum present then minutes are to be taken by the secretary (or staff), then approved, and recorded at the next scheduled meeting.

Section 4. Suspending Rules. Bylaws that are not preempted by state law, and provisions of Roberts Rules, may be suspended by a two-thirds vote of the board.

Section 5. Roberts Rules of Order. The Scott, Foresman Robert's Rule of Order 1990 Edition shall govern any situation that may not be covered by these bylaws.

Section 6. Applicability. The provisions of these By-Laws shall be subject to the provisions of any applicable federal, state or local law, regulation or ordinance.

Section 7. Board Policies.

- (a) The board may develop, or direct staff to develop, policies and guidelines for assisting or clarifying meeting procedures, Board member roles, application processes, court/legislative updates, continuing education, etc.
- (b) All policies must be within the established parameters of the Zoning Board of Adjustment as set forth in New Hampshire State Law, and these by-laws. No policy adopted by the Board shall have the effect of rendering any portion of these by-laws null & void.
- (c) Such policies shall be adopted by a majority vote at a regular meeting. Likewise, policies can be discontinued or abandoned by a majority vote at a regular meeting.
- (d) These by-laws should be reviewed every (3rd) year for currency and relevance.

Section 8. Responsibilities of Applicant/Agent. The Zoning Board of Adjustment is a quasi-judicial body. The presentation and all testimony given to the board must be truthful and given in good faith.

Section 9. Definitions.

Abutter (RSA 672:3)

- (a) "Abutter" is any person whose property adjoins or is directly across the street or stream from the land under consideration by the local land use board.
- (b) For the purpose of receiving testimony only, and not for the purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration
- (c) For the purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" refers to the officers of the collective/association, as defined in RSA 356-B-3, xx111.

Section 10. Public Notices.

- (a) Public notices of public hearings on each appeal shall be given in a local Rochester newspaper and shall be posted at City Hall at least (5) five calendar days prior to said hearing.
- (b) Such notice shall include the name of the applicant, description of property, action desired by the applicant, provision of the Zoning Ordinance concerned, the type of appeal being made, and the time and place of the hearing.

Section 11. Public Hearing Notice.

- (a) Prior to exercising its appeal powers, the Zoning Board of Adjustment shall hold a public hearing.
- (b) Notice of public hearing shall be given as follows:
 1. The applicant and every abutter shall be notified of the hearing by certified mail stating the time and place of hearing.
 2. Such notice shall be given not less than (5) five days before the date fixed for the hearing of appeal.
 3. The board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration.
 4. The board may hear such other person as it deems appropriate.
 5. The public hearing shall be held within (30) thirty days of the receipt of the notice of appeal.
 6. Any party may appear in person or by his/her agent or attorney at the hearing of appeal.
 7. The cost of notices, whether mailed, posted, or published shall be paid by the applicant. Failure to pay such costs shall constitute valid grounds for the board to terminate further consideration and to deny appeal without hearing.

Section 12. Appeals Each application for an appeal, such as appeals from an administrative

decision or an Historic District Commission decision, shall be made on forms provided by the board and shall be presented to the recording secretary of the Zoning Board of Adjustment who shall record the date of receipt over his/her signature.

At each meeting the recording secretary shall present to the board all appeal applications timely received by him/her prior to the beginning of the meeting.

An appeal to the board on any administrative decision or any Historic District Commission decision shall be taken within (30) thirty calendar days from the date of the decision appealed from.

The board shall reject any petition not properly filled out and will post the time of the hearing for all other petitions when received.

Section 13 Forms All forms and revisions thereof shall be adopted by resolution and shall become a part of the bylaws.

Section 14 Personal Notice Personal notice shall be made by certified mail to owners of record.
Note: Notice shall also be given to any other parties deemed by the board to have special interest. Said notice shall contain the same information as the public notice.

ARTICLE VI - Amendments

Amendments. These Bylaws may be adopted, amended, repealed, or altered, in whole or in part, by a majority vote of the Board at a regular meeting, provided that notice of the proposed change of such Bylaws is contained in the notice of such regular monthly meeting.