



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: August 18, 2015
To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **2015 Annual Meeting – Proposed By-Law Amendments**

As you know, the Zoning Board is required to have an “Annual Meeting” each year to elect officers and review the Board’s By-Laws. The Annual Meeting is scheduled for the meeting on August 26, 2015.

In preparing the copies of the By-laws for the packets, I observed that there were some minor amendments needed, in order to reflect modifications to State Law regarding minutes and decisions. Staff’s proposed changes are attached, and summarized below:

- Amending the “Last Revised” date to reflect the August 26, 2015 Annual Meeting date
- Amending the document header on pages 2 through 8, replacing the list of dates revised to state revised “through August 26, 2015.”
- Sections VI.A.4 and VI.A.7.b:
 - Amending “144 hours” to state “5 business days” consistent with current state law (RSA 91-A was amended to change to 5 business days several years ago);

Required Process for Adoption of By-Law Amendments

Per the By-laws (Section X):

- *These by-laws may be amended by a majority vote of the five (5) voting members of the Board upon notice published in the agenda of any regular or special meeting, and posted within the community.*

Recommendation:

- Adopt the proposed By-law amendments as presented by Staff.

Cc: Jillian Harris, AICP, Planning & Zoning Administrator

BY-LAWS OF THE MERRIMACK ZONING BOARD OF ADJUSTMENT

Last Revised August 26, 2015

Deleted: October 23, 2013

I. PURPOSE AND AUTHORIZATION

- A. These By-Laws of the Merrimack Zoning Board of adjustment (herein-after “the Board”) are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1, and the Zoning Ordinance of the Town of Merrimack.
- B. The purpose of these by-laws is to insure an orderly procedure in the execution of the duties of the Board.

II. MEMBERSHIP, DUTIES AND TERMS OF OFFICE

- A. Appointment of Members: The Board shall consist of five (5) members appointed by the Town Council. The appointment of members shall conform to the terms and requirements of RSA 673:3 (I) and RSA 673:5.
- B. Alternates: The Board shall encourage the Town Council to appoint, in addition to regular members, not more than three (3) alternate members who may serve, upon designation by the Chair, in place of a regular member in the event of absence or disqualification. Alternates are expected to participate in discussions during the public hearings but will deliberate and vote on petitions and issues before the board only when appointed to serve on the Board in place of a regular board member by the Board chair.
- C. Board members and alternates are expected to familiarize themselves with the petitions and issues before the Board and visit the locations referenced in the petitions prior to the scheduled zoning board meeting.
- D. Absences: After three consecutive unexcused absences, the Chair will confer with the member. After five annual unexcused absences, the Chair may recommend to the Town Council that the member be removed from the Board. “Unexcused” is defined as failure by the Board member to notify staff of their planned absence.

III. OFFICERS AND THEIR DUTIES

- A. A Chair shall be elected annually in the month of August by a majority vote of the Board. Said Chair shall serve for a period of one (1) year and shall be eligible for re-election as Chair. The same member shall not serve as Chair for more than three (3) consecutive years. The Chair shall preside over all meetings, hearings and, on-meetings, appoint such committees as directed by the Board, and shall perform other such duties as the Board may direct.

- B. The Vice-Chair shall be elected in the same manner and for the same period as the Chair. Said Vice-Chair shall be eligible for re-election as Vice-Chair. The Vice-Chair shall have the same powers as the Chair during the absence of the Chair.
- C. The Clerk shall be appointed by the Board of Adjustment and shall serve at the pleasure of the Board. The Clerk shall maintain a record of all meetings transactions, votes, motions and decisions of the Board and shall affix his/her signature to all records and notices in the name of the Board, and shall also perform other such duties as the Board may direct. The default position for the Clerk shall be the Planning and Zoning Administrator or other employee of the Community Development Department.
- D. In the event that any of the above-named officers for any reason are not able to continue in their elective/appointed capacity as an officer of the Board of Adjustment and upon notice to the Board to this effect, a new election will be held to elect/appoint a successor who will serve until the next annual election/appointment.

IV. MEETINGS

- A. Regular Meetings: A regular meeting of the Board shall be held at a date and time indicated in the notice of public hearing published and posted by the Board pursuant to RSA 676:7. All regular meetings shall be open to the public. The following general rules of procedure shall govern the conduct of such meetings.
 - 1. Quorum Required: A majority of the membership of the Board i.e., three (3) members, shall constitute the quorum necessary to transact business at any meeting of the Board. Any member of the Board who cannot attend any hearing shall notify the Chair and/or the Clerk. If a member is absent or unable to act in any particular case pending before the Board, the Chair shall designate an alternate, if one is in attendance, to act in his/her place.
 - 2. Absence of Chair and Vice Chair: In the event that the Chair and Vice Chair are absent, once a quorum is attained, the most senior member present or his/her designee, shall call the meeting to order. The most senior member or his/her designee shall entertain a motion for nominations of Acting Chair and Vice Chair for that meeting. Appointment(s) shall be by a majority vote.
 - 3. The Board may, for the duration of a meeting, by majority vote and with consent of the Chair, appoint a Board member as Acting Chair for a specific matter, application or duration. The purpose of this provision is to allow members of the Board to obtain experience as Chair so that, in the event of the absence or unavailability of the Chair or Vice Chair, such member may conduct a hearing with the necessary expertise. A Board member may be appointed Acting Chair even though the Chair or Vice Chair may be present. The position of Acting Chair may be revoked for good cause by a majority vote of those members present.

Deleted: 8/26/99, 12/21/00, 1/25/01, 9/26/02, 6/26/03, 5/26/05, 5/25/06, 11/20/08, 7/22/10, 3/28/12

4. Records Required: Minutes of the events of the meeting shall be taken and shall include the names of members in attendance, persons appearing before the Board, a brief description of the topics discussed, and a record of any actions taken. Such minutes shall be available for public inspection within 5 business days of the meeting. Minutes of all meetings shall conform to the requirements of RSA 91-A.

Deleted: 144 hours

5. Order of Business: The general order of business shall be as outlined below, unless otherwise determined by the Chair:

- a) Call to order
- b) Roll call
- c) Public hearings on all applications
- d) Reading and acceptance of minutes of previous meeting
- e) Communications
- f) Unfinished and other business
- g) Adjourn

6. Voting:

- a) A motion, duly recorded shall be passed by a majority of members present, once a quorum has been established, voting in the affirmative.
- b) The Board shall deliberate and vote on all applications and appeals in open session following the public hearing, and the Clerk shall notify the applicant in writing. The concurring vote of 3 members of the Board shall be necessary to decide in favor of any applicant or any matter that it is required to pass upon.
- c) Alternate Members may participate in the Board's deliberations and voting on any application only when duly appointed by the Chair to replace a regular member who is absent.

7. Record of Decision:

- a) The Board shall issue a final written decision, which approves, approves with conditions or disapproves an application. If the application is not approved, the Board shall provide the applicant with written reasons for disapproval.
- b) Whenever the Board issues a decision, the decision shall be placed on file in the Board's office and shall be made available for public inspection within 5 business days after the decision is made. If the Board does not have an office that maintains regular business hours, the copies of the decision shall be filed with the Town Clerk.

Deleted: 144 hours

B. Special Meetings: Special meetings may be held on call of the Chair. Notice to members shall be at least 5 calendar days prior to each meeting. Notice to the public shall be in the same manner as that called for a regular meeting. Notice shall specify the purpose of the

meeting.

- C. Conduct of Meetings: All Meetings shall be held in conformity with the requirements of RSA 91-A.

V. PUBLIC HEARINGS

- A. Public hearings shall be held, as required by RSA 674:15 and RSA 676:7.

- B. Notice: Notice of the public hearing shall be given as follows:

1. The applicant and every abutter shall be notified by certified mail stating the time and place of the hearing; and such notice shall be given not less than five (5) calendar days before the date fixed for the hearing of the application.
2. A public notice of the hearing shall be placed in a newspaper of general circulation in the area not less than five (5) calendar days before the date fixed for the hearing of the application.
3. The public hearing shall be held within thirty (30) days of the receipt of the notice of Application.
4. The cost of notice, whether mailed, posted, or published, shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration and to deny the application without public hearing.

- C. Conduct of the Public Hearing: The conduct of the hearing shall be governed by the following rules:

1. The Chair shall call the hearing to order.
2. The Chair shall explain to those in attendance the procedure to be followed.
3. The Vice-Chair or another member designated by the chair, shall swear in those members of the public who will be testifying.
4. The Chair shall read the application.
5. The applicant or his/her representative shall present the reasons for the application.
6. Those in favor of the application shall be allowed to speak.
7. Those in opposition of the application shall be allowed to speak.

8. The applicant and those in favor of the application shall be allowed to speak in rebuttal.
9. Those in opposition to the application shall be allowed to speak in rebuttal.
10. The Chair in his/her discretion shall select the order in which the applications shall be heard.
11. The Chair in his/her discretion may limit the time of any speaker, either for or against the application.
12. Each speaker shall identify him or herself by stating his/her full name and address.
13. Any member of the Board, including all Alternate Members, may ask questions at any point in the hearing.
14. Any party to the hearing who desires to ask a question of another party to the hearing must address the question to the Chair.
15. Whenever the Board exercises its regulatory or quasi-judicial powers, it may, at its sole discretion, compel the attendance of witnesses. All expenses incurred under this section for compelling the attendance of a witness shall be paid by the party or parties requesting that witness to be compelled to attend.
16. The Chair shall call the hearing to a close, as appropriate, outlining the Board's anticipated procedures concerning the proposal.

VI. FURTHER PROCEDURES, VARIANCES, REHEARINGS, AND SPECIAL EXCEPTIONS AND APPEALS

A. Variances:

1. If an applicant is unable to appear at a public hearing, notice shall be given to the Chair explaining the circumstances for the non-appearance. The Chair shall appoint a new date for the hearing upon payment of fees.
2. A new application for a variance concerning substantially the same property and the same variance shall not be heard. Any variance application previously denied shall be reviewed by the Administrative Officer and by the Board in public session to determine whether or not a substantial change exists.

B. Rehearings:

1. Any Party to the action or proceedings for a variance, special exception or other application, or any person directed thereby, may apply for a rehearing within thirty (30) days from the date the Board voted to approve or disapprove the application.

2. Upon the filing of a motion for rehearing, the Board shall consider whether to grant or deny the motion for rehearing at the next following regular meeting of the Board. In the event that the motion for rehearing is received not less than twenty days prior to the next following regular meeting of the Board or in the event that no regular meeting of the Board is scheduled within thirty days of receipt of the motion for rehearing, the Board may elect to hold a special meeting to consider whether to grant or deny the motion for rehearing. A decision as to whether to grant or deny a motion for rehearing shall be made within thirty calendar days of the receipt of the motion for rehearing. In the event that a decision as to whether to grant or deny a motion for rehearing is not made within the prescribed thirty days, the motion for rehearing shall be considered to be denied.
3. The Board shall consider whether to grant or deny a motion for rehearing only at a public meeting of the Board. Published notice of the intent of the Board to act upon the motion for rehearing and notification to abutters or parties shall not be given nor will public testimony be accepted, however, any consideration of a motion for rehearing shall appear on the Board's regularly posted agenda. The Board may consult with town staff, legal counsel or any other necessary party in reaching its decision as deemed appropriate by the Chair.
4. If a motion for rehearing is granted by the Board, the Board may act to suspend the order or decision at issue and may choose to limit the scope of the rehearing to issues raised by the moving party in the motion for rehearing.
5. If the Board grants a rehearing, this rehearing shall be held at the next following regular public hearing of the Board or act at a special meeting in accordance with section IV (B) of the By-Laws. Such rehearing shall be controlled by the same procedures and rules as a new appeal except that the moving party shall have the burden of demonstrating that the previous decision of the Board should be changed.

C. Special Exceptions:

1. The Board may grant such special exceptions to the terms of the Zoning Ordinance of the Town of Merrimack as shall be prescribed therein. All special exceptions shall be made in harmony with the general purpose and intent and requirements of the zoning ordinance.
2. All applications for a special exception shall follow the procedures contained herein for applications for a variance.

D. OTHER APPEALS

1. Any Appeal requested pursuant to RSA 676:5, for consideration by the Zoning Board of Adjustment pursuant to its authority under RSA 674:33, shall be filed with the Board within 30 days of the date of issuance of the order or decision being appealed.

2. Such appeal shall be taken within the 30-day period specified in Sec. VI.D.1 by filing, with the officer from whom the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof.
3. All applications for any appeals filed with the Board pursuant to RSA 676:5 shall follow the procedures contained herein for application(s) for a Variance.

VII. JOINT MEETINGS AND HEARINGS

- A. Request for Joint Meetings: The Board, or any applicant, or any other land use board, may request a joint meeting or hearing of the boards on any topic common to their respective jurisdictions. Each board shall have the discretion as to whether or not to hold a joint meeting with any other board.
- B. Planning Board Shall Chair: The Planning Board Chair shall chair any joint meeting or hearing in which the Planning Board is involved. The Chair shall follow the general rules of conduct outlined in the by-laws of the Planning Board.
- C. Notices and Decisions: Each board participating in the joint meeting or hearing shall be responsible for providing notice, filing minutes and decisions, and for rendering and issuing decisions, as appropriate, for the subject matter within its jurisdiction, as prescribed for that board by statute, local ordinance, or other rules of procedure.

VIII. STAFF AND FINANCES

Within the limits of RSA 673:16, the Board may employ such staff personnel and/or consultants as it sees fit to aid the Board in its work. Appointments shall be made by a majority vote of the members present at any regular or special meeting at which a quorum has been established. The Chair may be authorized to sign contracts for employing personnel and contracting for consulting services as approved by the Board.

IX. APPLICATIONS AND FORMS

- A. The Administrative Office shall keep an adequate supply of applications for variances, special exceptions, and for rehearings for dissemination to a person who might request these applications.
- B. No application shall be placed upon any agenda for acceptance at a regular meeting of the Board, unless the application is received by the Clerk no less than 15 days prior to the meeting date at which it is to be accepted and/or discussed.
- C. Applications deemed incomplete or insufficient by Community Development will not be accepted. Supplemental application materials may be submitted to Community Development no less than ten (10) days prior to the date of the hearing to allow inclusion in the Board members' packets. Supplemental materials submitted less than ten (10) days prior to the hearing may result in a continuation of the application as determined by a

majority vote of the Board.

X. AMENDMENTS

- A. These by-laws may be amended by a majority vote of the five (5) voting members of the Board upon notice published in the agenda of any regular or special meeting, and posted within the community.

XI. WAIVERS

- A. Any portion of these rules or procedures or by-laws may be waived, by a majority vote of the Board 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 the intent of the rules or by-laws.

XII. FILING WITH TOWN CLERK

- A. These by-laws and any amendments thereto shall be placed on file with the Town Clerk and in the Community Development Department for public inspection.
- B. These by-laws, and any subsequent amendments, shall become effective immediately upon passage by the Board as recorded in the minutes of the meeting at which such action occurs.