



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, including back up information, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: 1/11/18 Date of Meeting: 1/25/18
 Submitted by: MICHAEL MALZONE
 Department: _____ Time Required: 15 MINUTES
 Speakers: MIKE MALZONE Background Info. Supplied: Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

| | | | |
|------------------------|-------------------------------------|-------------------------------------|--------------------------|
| Appointment: | <input type="checkbox"/> | Recognition/Resignation/Retirement: | <input type="checkbox"/> |
| Public Hearing: | <input checked="" type="checkbox"/> | Old Business: | <input type="checkbox"/> |
| New Business: | <input checked="" type="checkbox"/> | Consent Agenda: | <input type="checkbox"/> |
| Nonpublic: | <input type="checkbox"/> | Other: | <input type="checkbox"/> |

TITLE OF ITEM

PLANNING AND ZONING BOARD PUBLIC NOTICES AND RESIDENTIAL NOTICES

DESCRIPTION OF ITEM

REFERENCE (IF KNOWN)

RSA: _____ Warrant Article: _____
 Charter Article: _____ Town Meeting: _____
 Other: _____ N/A

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

| | | | |
|------------------|--------------------------|---------------------|--------------------------|
| Projector: | <input type="checkbox"/> | Grant Requirements: | <input type="checkbox"/> |
| Easel: | <input type="checkbox"/> | Joint Meeting: | <input type="checkbox"/> |
| Special Seating: | <input type="checkbox"/> | Other: | <input type="checkbox"/> |
| Laptop: | <input type="checkbox"/> | None: | <input type="checkbox"/> |

CONTACT INFORMATION

Name: MIKE MALZONE Address: 8 PR. CHAMBERLAIN RD
 Phone Number: 603-533-6242 Email Address: _____

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:
 Hold for Meeting Date: _____



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing


Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MEMORANDUM

Date: January 18, 2018
To: Becky Thompson, Executive Secretary, Town Manager's Office
CC: Town Council
Eileen Cabanel, Town Manager
From: Timothy J. Thompson, AICP, Community Development Director 
Subject: **Public Notice Process Summary – Planning Board & Zoning Board of Adjustment**

As requested in preparation for the Town Council's January 25, 2018 meeting, please find this memo as a summary of the Planning Board and Zoning Board public notice process, per the requirements of State Statute.

Planning Board Notice Process

The process the Town of Merrimack follows for notification for Planning Board applications is set forth in RSA 676:4, Subsection I(D), and is summarized as follows:

A notice is required when an application has been filed and placed on the Planning Board's agenda for submission. The notice must:

- Be sent by certified mail at least 10 days before the date of the hearing. It must be sent to the applicant, all abutters, holders of conservation, preservation or agricultural preservation restrictions, and all professionals whose seal appears on any plans;
- Be provided to the general public as the subdivision and site plan review regulations specify (*In Merrimack this is done by posting the full agendas on the Town's website, at various bulletin boards around Town Hall and the Library*);
- Include the date, time, and place of the meeting, the name of the applicant, the location and general description of the proposal; and
- Be paid for in advance by the applicant.

This process is followed for the *initial* application when it is placed on a Board agenda. If the Board at the public hearing decides to continue the hearing to a date certain (which must be announced at the meeting when a motion is made to continue the hearing), it does not require further written notice to abutters easement holders and professionals (per the requirements of the same Statute, RSA 676:4).

In the event a continuance is not to a specific date, the applicant is then required to pay for additional written notice once the rescheduled date of the hearing is determined.

Zoning Board Notice Process

The process the Town of Merrimack follows for notification for Zoning Board applications is set forth in RSA 676:7 and is summarized as follows:

Prior to exercising its appeals powers, the board of adjustment shall hold a public hearing. Notice of the public hearing shall be given as follows:

- Be sent by certified mail at least 5 days before the date of the hearing. It must be sent to the applicant, all abutters, holders of conservation, preservation or agricultural preservation restrictions, and all professionals whose seal appears on any plans;
- A public notice of the hearing shall be placed in a newspaper of general circulation in the area not less than 5 days before the hearing (*In Merrimack this is done by Legal Notice in the NH Union Leader. In addition to the minimum statutory requirement of the newspaper notice, we post the full agendas on the Town's website, at various bulletin boards around Town Hall and the Library*);
- Include the date, time, and place of the meeting, the name of the applicant, the location and requested relief; and
- Be paid for in advance by the applicant.

As with the Planning Board, this process is followed for the *initial* application when it is placed on a Board agenda. If the Board at the public hearing decides to continue the hearing to a date certain (which must be announced at the meeting when a motion is made to continue the hearing), it does not require further written notice to abutters easement holders and professionals.

In the event a continuance is not to a specific date, the applicant is then required to pay for additional written notice once the rescheduled date of the hearing is determined.

Defining "Abutter"

I thought it may also be useful to provide the definition of abutter (per State Statute, RSA 672:3) as it relates to notice requirements (**emphasis added for the notification portion of the definition**):

"Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for 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. For 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 means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For 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 manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Please let me know if you have any further questions, or if I can provide any additional information.

TITLE LXIV PLANNING AND ZONING

CHAPTER 672 GENERAL PROVISIONS

Words and Phrases Defined

Section 672:3

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for 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. For 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 means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For 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 manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002.

TITLE LXIV PLANNING AND ZONING

CHAPTER 676 ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

Planning Board

Section 676:4

676:4 Board's Procedures on Plats. –

I. The procedures to be followed by the planning board when considering or acting upon a plat or application submitted to it for approval under this title shall be as set forth in the board's subdivision regulations, subject to the following requirements:

(a) An application for approval filed with the planning board under this title, other than an application for subdivision approval, shall be subject to the minimum requirements set forth in this section and shall be governed by the procedures set forth in the subdivision regulations, unless the planning board by regulation specifies other procedures for that type of application.

(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). An application shall not be considered incomplete solely because it is dependent upon the submission of an application to or the issuance of permits or approvals from other state or federal governmental bodies; however, the planning board may condition approval upon the receipt of such permits or approvals in accordance with subparagraph (i). The applicant shall file the application with the board or its agent at least 21 days prior to the meeting at which the application will be accepted. The application shall include the names and addresses of the applicant, all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or county records for unincorporated towns or unorganized places not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board. The application shall also include the name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board.

(c)(1) The board shall, at the next regular meeting or within 30 days following the delivery of the application, for which notice can be given in accordance with the requirements of subparagraph (b), determine if a submitted application is complete according to the board's regulation and shall vote upon its acceptance. Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete. Upon determination by the board that a submitted application is complete according to the board's regulations, the board shall begin formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i), or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f). Upon failure of the board to approve, conditionally approve, or disapprove the application, the selectmen or city council shall, upon request of the applicant, immediately issue an order directing the board to act on the application within 30 days. If the planning board does not act on the application within that 30-day time period, then within 40 days of the issuance of the order, the selectmen or city council shall certify on the applicant's application that the plat is approved pursuant to this paragraph, unless within those 40 days the selectmen or city council has identified in writing some specific subdivision regulation or zoning or other ordinance provision with which the application does not comply. Such a certification, citing this paragraph, shall constitute final approval for all purposes including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15.

(2) Failure of the selectmen or city council to issue an order to the planning board under subparagraph (1), or to certify approval of the plat upon the planning board's failure to comply with the order, shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application if the court determines that the proposal complies with existing subdivision regulations and zoning or other ordinances. If the court determines that the failure of the selectmen or the city council to act was not justified, the court may order the municipality to pay the applicant's reasonable costs, including attorney's fees, incurred in securing such order.

(d)(1) Notice to the applicant, holders of conservation, preservation, or agricultural preservation restrictions, abutters, and the public shall be given as follows: The planning board shall notify the abutters, the applicant, holders of conservation, preservation, or agricultural preservation restrictions, and every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board by verified mail, as defined in RSA 451-C:1, VII, of the date upon which the application will be formally submitted to the board. Notice shall be mailed at least 10 days prior to submission. Notice to the general public shall also be given at the same time by posting or publication as required by the subdivision regulations. 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. For any public hearing on the application, the same notice as required for notice of submission of the application shall be given. If notice of public hearing has been included in the notice of submission or any prior notice, additional notice of that hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session was made known at the prior hearing. All costs 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 planning board to terminate further consideration and to disapprove the plat without a public hearing.

(2) For those proposals in which any structure or proposed building site will be within 500 feet of the top of the bank of any lake, pond, river, or stream, the planning board shall also notify the department of environmental services by first class mail at the same time that notice is provided to abutters, cost to be paid in advance by the applicant consistent with subparagraph (d) (1). The sole purpose of notification to the department shall be to provide information to the department for dam hazard classification. This requirement shall not confer upon the department the status of an abutter. Failure by the municipality to notify the department shall not be considered a defect of notice.

(e) Except as provided in this section, no application may be denied or approved without a public hearing on the application. At the hearing, any applicant, abutter, holder of conservation, preservation, or agricultural preservation restriction, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the subdivision regulations or the board at each hearing. Public hearings shall not be required, unless specified by the subdivision regulations, when the board is considering or acting upon:

(1) Minor lot line adjustments or boundary agreements which do not create buildable lots, except that notice to abutters and holders of conservation, preservation, or agricultural preservation restrictions shall be given prior to approval of the application in accordance with subparagraph (d) and any abutter or holder of conservation, preservation, or agricultural preservation restrictions may be heard on the application upon request; or

(2) Disapprovals of applications based upon failure of the applicant to supply information required by the regulations, including identification of abutters or holders of conservation, preservation, or agricultural preservation restrictions; or failure to meet reasonable deadlines established by the board; or failure to pay costs of notice or other fees required by the board.

(f) The planning board may apply to the selectmen or city council for an extension not to exceed an additional 90 days before acting to approve or disapprove an application. The applicant may waive the requirement for planning board action within the time periods specified in subparagraph (c) and consent to such extension as may be mutually agreeable.

(g) Reasonable fees in addition to fees for notice under subparagraph (d) may be imposed by the board to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications.

(h) In case of disapproval of any application submitted to the planning board, the ground for such disapproval shall be adequately stated upon the records of the planning board.

(i) A planning board may grant conditional approval of a plat or application, which approval shall become final without further public hearing, upon certification to the board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. Such conditions may include a statement notifying the applicant that an approval is conditioned upon the receipt of state or federal permits relating to a project, however, a planning board may not refuse to process an application solely for lack of said permits. Final approval of a plat or application may occur in the foregoing manner only when the conditions are:

(1) Minor plan changes whether or not imposed by the board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment; or

(2) Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the board; or

(3) Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies or approvals granted by other boards or agencies, including state and federal permits.

All conditions not specified within this subparagraph as minor, administrative, or relating to issuance of other approvals shall require a hearing, and notice as provided in subparagraph I(d), except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session were made known at the prior hearing.

II. A planning board may provide for preliminary review of applications and plats by specific regulations subject to the following:

(a) Preliminary conceptual consultation phase. The regulations shall define the limits of preliminary conceptual consultation which shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan. Such discussion may occur without the necessity of giving formal public notice as required under subparagraph I(d), but such discussions may occur only at formal meetings of the board.

(b) Design review phase. The board or its designee may engage in nonbinding discussions with the applicant beyond conceptual and general discussions which involve more specific design and engineering details; provided, however, that the design review phase may proceed only after identification of and notice to abutters, holders of conservation, preservation, or

agricultural preservation restrictions, and the general public as required by subparagraph I(d). The board may establish reasonable rules of procedure relating to the design review process, including submission requirements. At a public meeting, the board may determine that the design review process of an application has ended and shall inform the applicant in writing within 10 days of such determination. Statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken.

(c) Preliminary review shall be separate and apart from formal consideration under paragraph I, and the time limits for acting under subparagraph I(c) shall not apply until formal application is submitted under subparagraph I(b).

III. A planning board may, by adopting regulations, provide for an expedited review and approval for proposals involving minor subdivisions which create not more than 3 lots for building development purposes or for proposals which do not involve creation of lots for building development purposes. Such expedited review may allow submission and approval at one or more board meetings, but no application may be approved without the full notice to the abutters, holders of conservation, preservation, or agricultural preservation restrictions, and public required under subparagraph I(d). A hearing, with notice as provided in subparagraph I(d), shall be held if requested by the applicant, abutters, or holders of conservation, preservation, or agricultural preservation restrictions any time prior to approval or disapproval or if the planning board determines to hold a hearing.

IV. Jurisdiction of the courts to review procedural aspects of planning board decisions and actions shall be limited to consideration of compliance with applicable provisions of the constitution, statutes and regulations. The procedural requirements specified in this section are intended to provide fair and reasonable treatment for all parties and persons. The planning board's procedures shall not be subjected to strict scrutiny for technical compliance. Procedural defects shall result in the reversal of a planning board's actions by judicial action only when such defects create serious impairment of opportunity for notice and participation.

Source. 1983, 447:1. 1985, 159:1. 1986, 57:1, 2; 229:1, 2. 1989, 266:30. 1990, 275:1. 1995, 117:1, 2. 1997, 142:1-4; 249:1. 1998, 274:1. 2004, 71:6. 2005, 33:3, 4. 2008, 229:2. 2009, 31:2, 3. 2010, 39:1, 2. 2011, 164:1, 2. 2013, 270:2, eff. Sept. 22, 2013. 2016, 81:1, eff. July 18, 2016. 2017, 59:3, eff. Aug. 1, 2017.

TITLE LXIV PLANNING AND ZONING

CHAPTER 676 ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

Zoning Board of Adjustment

Section 676:7

676:7 Public Hearing; Notice. –

I. Prior to exercising its appeals powers, the board of adjustment shall hold a public hearing. Notice of the public hearing shall be given as follows:

(a) The appellant and every abutter and holder of conservation, preservation, or agricultural preservation restrictions shall be notified of the hearing by verified mail, as defined in RSA 451-C:1, VII, stating the time and place of the hearing, and such notice shall be given not less than 5 days before the date fixed for the hearing of the appeal. The board shall hear all abutters and holders of conservation, preservation, or agricultural preservation restrictions desiring to submit testimony and all nonabutters who can demonstrate that they are affected directly by the proposal under consideration. The board may hear such other persons as it deems appropriate.

(b) A public notice of the hearing shall be placed in a newspaper of general circulation in the area not less than 5 days before the date fixed for the hearing of the appeal.

II. The public hearing shall be held within 30 days of the receipt of the notice of appeal.

III. Any party may appear in person or by the party's agent or attorney at the hearing of an appeal.

IV. 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 appeal without public hearing.

V. If the board of adjustment finds that it cannot conclude the public hearing within the time available, it may vote to continue the hearing to a specified time and place with no additional notice required.

Source. 1983, 447:1. 1985, 159:25. 1996, 226:1. 1997, 142:6, eff. Aug. 8, 1997. 2017, 4:1, eff. May 30, 2017; 59:5, eff. Aug. 1, 2017.