

Town of Belmont



BOARD OF ADJUSTMENT and BUILDING CODE BOARD OF APPEALS

Rules of Administrative Procedure

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SECTION 1: AUTHORITY

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance and Map of the Town of Belmont.

SECTION 2: POWERS

In accordance with RSA 673:1(V), the Board of Adjustment shall also act as the Building Code Board of Appeals. These Rules are adopted to guide the procedures of the Board when acting in either capacity as applicable.

- A. The powers of the Board of Adjustment shall be those authorized under RSA 674:33.
- B. The powers of the Building Code Board of Appeals shall be those authorized under RSA 674:34.

SECTION 3: OFFICERS and MEMBERS

- A. Under the provisions of RSA 669:17, members of the Board of Adjustment shall be elected by ballot at the annual town elections and shall serve three-year terms.
- B. In accordance with RSA 673:6, the Board of Adjustment shall also include up to five alternate members who shall serve three-year terms and who shall be appointed by the Board. Alternates shall be appointed by the chairman to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities. Alternates should attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve.
- C. Vacancies for alternate and full members, which occur other than at the expiration of a term shall be filled by the Board of Adjustment.
- D. Members and alternates are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member or alternate unable to attend a meeting shall notify the Land Use Office as soon as possible. Members, including the chairman and vice chairman shall participate in the decision making process and vote to approve or disapprove all motions under consideration.
- E. Attendance. In order to best serve the needs of the applicant and to fulfill the obligations of the appointed position, members and alternate members shall be required to attend a minimum number of regular meetings during each year.

The minutes of the Board shall record the names of all members and alternates attending each meeting and shall include the designation of excused (E) or unexcused (U) for absences. Excused absences are those for which prior notice has been given.

- F. Removal of Members. If three consecutive regular meetings; or a total of four unexcused regular meetings in one calendar year are missed as unexcused by an elected member, the chairman of the Board shall forward to the Selectmen the recommendation to hold a public hearing regarding the removal of said member from the Board. In the case of an appointed alternate member, the Board of Adjustment may hold a public hearing regarding the removal of said alternate member from the Board.

In compliance with RSA 673:13, after public hearing, elected members of the Zoning Board may be removed by action of the Board of Selectmen upon written findings of inefficiency, neglect of duty, or malfeasance of office. Appointed alternate members may be removed by action of the Board of Adjustment upon the same findings.

The Selectmen, or the Zoning Board of Adjustment, as appropriate, shall file with the Town Clerk a written statement of reasons for removal under this section.

- G. A chairman shall be elected annually by a majority vote of the Board in the month of April. The chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

- H. A vice-chairman shall be the senior Board member in attendance. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters that come before the Board during the absence of the chairman.
- I. All officers shall serve for one year and shall be eligible for re-election.

SECTION 4: MEETINGS

- A. Regular meetings shall be held on the fourth Wednesday of each month at 7pm at the Corner Meeting House. Adjustments may be made in the schedule as necessary. Other meetings may be held on call of the chairman provided public notice is given in accordance with NH RSA 91-A:2(II) and notice to each member is given at least 24 hours in advance excluding Sundays and legal holidays.
- B. 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 himself/herself from sitting on a particular case, the chairman 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.

At meetings where an alternate member is not required to sit in place of a regular member, said alternate shall join the Board at the table and participate in the public hearing portion, but may not participate in the discussion or voting portion of the meeting.

- C. Disqualification. If any member finds it necessary to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the chairman as soon as possible so that an alternate may be requested to sit in his/her 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. The disqualification shall be announced by either the chairman or the member disqualifying himself/herself before the beginning of the public hearing on the case. The disqualified member shall absent himself/herself from the Board table during the public hearing and during all deliberation on the case.
- D. Order of Business. The order of business for regular meetings shall, whenever possible, be as follows:
1. public hearing
 2. deliberation and action by the board
 3. minutes of previous meeting
 4. land use staff report
 5. new business
 6. adjournment

SECTION 5: APPLICATION/DECISION**A. Applications**

1. Each application for a hearing before the Board shall be made on forms provided by the Land Use Office and shall be presented to the Land Use Staff who shall record the date of receipt. Additional documentation shall be required as necessary as part of the application packet to obtain sufficient information for the Board's review of the proposal.
2. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 20 days of the decision.
3. At each meeting, the Land Use Staff shall present to the board all applications received at least 20 clear days before the date of the meeting.
4. Application forms and instructions shall be provided and revised as necessary by the Land Use Staff to meet the review needs of the Board.

B. Public Notice

1. Public notice of public hearings on each application shall be given in the Citizen newspaper and shall be posted at the Belmont Town Hall and Belmont Post Office not less than five clear days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property, tax map identification, action desired by the applicant, provisions of the Ordinance concerned, the type of appeal being made and the date, time and place of the meeting.
2. Personal notice shall be made by certified mail to the entities included in the notification mailing instructions not less than 5 clear days before the date of the hearing. Notice shall also be given to the Planning Board, Town Clerk and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
3. The costs of all required notices must be paid for, in advance, by the applicant. Fees shall be indicated on the Town of Belmont non-refundable fee schedule.

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

1. The chairman shall call the hearing in session, appoint alternate members for the entire evening as necessary and explain the meeting procedures.
2. The chairman shall read the notice of each hearing, inquire if any member or alternate requests to be disqualified and make replacement alternate appointments for this hearing as necessary.
3. In the instance of a special exception, the chairman shall confirm that at least 3 participating members have viewed the site. In the instance where 3 members have not viewed the site, the public hearing will be postponed until such viewing occurs. Time certain for the continued hearing shall be given at this time.

4. In the instance where a full 5-member voting Board cannot be seated, the chairman will offer the applicant the opportunity to proceed with a reduced Board, or to have the hearing postponed until the next regular meeting date, with the understanding that an affirmative vote of 3 members is required to decide in favor of any appeal and that action by a reduced Board is not, in and of itself, grounds for a rehearing.
5. Each person who speaks shall be required to state his/her name and address and indicate whether he/she is a party to the case, an agent or counsel of a party to the case, an abutter, a non-abutter with evidence that the proposal will have impact on his/her property, or interested citizen.
6. The Board shall hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance.
7. Comments and questions will be addressed to the chairman.
8. Members of the Board may ask questions at any point during testimony.
9. The applicant, or his/her representative so authorized in writing, shall be in attendance and shall present the appeal to the Board.
10. Those appearing in favor of the appeal shall be allowed to speak.
11. Those in opposition to the appeal shall be allowed to speak.
12. The applicant and those in favor shall be allowed to speak in rebuttal.
13. Those in opposition to the appeal shall be allowed to speak in rebuttal.
14. Any person who wants the Board to compel the attendance of a witness shall present his/her request in writing to the chairman not later than 3 days prior to the public hearing.
15. The chairman 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.
16. The hearing on the appeal shall be declared closed.

- D. Decisions. The Board may begin deliberation on the merits of the appeal at this time and act to approve, approve with conditions, deny the appeal, or defer its decision. Cases shall be decided within 35 days after completion of the hearing.

Notice of the decision or deferral will be made available for public inspection within 144 hours, as required by RSA 676:3, and will be sent to the applicant and other parties deemed by the Board to have special interest. If the appeal is denied or deferred, the notice shall include the reasons therefore.

- E. Appeal of Decision of the Board. Under RSA 677:2, any party to the action or proceedings or any person directly affected by an order or decision of the Board may apply for a rehearing within 30 days of the order or decision. The motion for rehearing must set forth fully all the grounds upon which it is claimed that the decision or order complained of is unlawful or unreasonable. Forms provided by the Land Use Office shall be used.

SECTION 6: RECORDS

The records of the Board shall be kept by the Land Use Staff and made available for public inspection at the Belmont Town Hall, in accordance with RSA 673:17.

- A. Final written decisions will be placed on file and available for public inspection within 144 hours after the decision is made. RSA 676:3.
- B. 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 within 144 hours of the public hearing. RSA 91-A:2II.
- C. A voice recorder shall be used to record meetings. Recording tapes will be erased for reuse when the written minutes of the meeting have been completed and approved by the Board.
- D. Any physical evidence submitted to the Board as part of an application or otherwise, by any party, in regards to a appeal before the Board shall be retained by the Board as part of that record. Such evidence may be returned to the presenter only at the expiration of all appeal dates, at the request of the presenter, and if an adequate copy of said material can be produced, at the cost of the presenter, to remain as a part of the permanent record.

SECTION 7: AMENDMENTS and WAIVERS.

- A. These rules of procedure may be amended by a majority vote of the members of the board at a regular meeting of the board.
- B. These rules of procedure may be waived or modified when, in the opinion of the Board, specific circumstances indicate that such waiver or modification will properly carry out the purpose and intent of these rules.

SECTION 8: JOINT MEETINGS AND HEARINGS

- A. RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other town "land use boards", including the Planning Board, Building Official, and Heritage Commission, 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 chairman of the two boards.

- C. A public hearing on any appeal to the Board will be held jointly with another board only under the following conditions:
 - 1. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - 2. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board chairman shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment chairman shall chair the joint hearing; and
 - 3. 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
 - 4. Notice of a joint hearing shall be consistent with the rules of each land use board. The boards may require only one notice for abutters; and
 - 5. The filing of decisions shall be done separately by each board according to its procedures and responsibilities; and
 - 6. The other board shall concur in these conditions.