Town of Rye, New Hampshire

ZONING BOARD OF ADJUSTMENT

Rules of Procedure

Adopted: June 5, 2013

Amended: January 8, 2014

Section One: Authority

These rules of procedure are adopted under the authority of New Hampshire RSA 676:1 and RSA 676:2, the Rye zoning ordinance ("Ordinance") and town zoning map, as each may be amended from time to time.

Section Two: Purpose

To establish rules guiding all Rye Zoning Board of Adjustment ("Board") functions such as conduct of meetings, duties of officers, conflict of interest, etc. Each member and alternate shall have his/her own copy of this document and become familiar with its content. Unless otherwise described, the "Board" shall mean five (5) members of the Rye Zoning Board of Adjustment, but no less than three (3) and when applicable, such duly designated alternates ("alternate member") assigned on a particular case, session or matter.

Section Three: Officers

3.1 Election of Officers
The Board shall elect annually by a majority vote of the Board at its first meeting following the Rye town meeting, a chairman, vice-chairman and clerk. All officers shall serve for one (1) year and shall be eligible for re-election.

3.2 Duties
3.2.1 Chairman: The chair shall preside over all meetings of the Board and may act on behalf of the Board on matters specifically authorized by the Board and shall affix his/her signature in the name of the Board when so authorized.

3.2.2 Vice Chairman: The vice-chair shall preside in the absence of the chair and shall have the full powers of the chair on matters which come before the Board during the absence of the chair.

3.2.3 Clerk: In the absence of both the chair and vice chair, the clerk will preside and shall have the full powers of the chair on matters which come before the Board. The clerk shall review and sign all agendas.

3.2.4 If the chair, vice-chair and clerk are unavailable, the primary Board member with the most seniority shall exercise the duties of the chair.

Section Four: Members and Alternates

4.1 Members: Members of the Board shall be elected and shall serve for a term provided under RSA 673:5, II of three (3) years. All terms shall begin at the first meeting following town elections. Appointments shall be staggered in accordance with RSA 673:3 and 673:5 so that no more than two (2) appointments occur annually, except when required to fill vacancies. The

commencement term and the holdover provisions must be consistent with the requirements set forth NH RSA 673:3 and RSA 673:5.

Board members, both primary and alternate, must reside full time in Rye, NH and be registered voters of Rye.

4.2 Alternates: In accordance with RSA 673:6 a minimum of three (3) and up to five (5) alternate members shall be appointed by the Board and shall serve a term of up to three (3) years. Such terms shall be staggered. Anyone wishing to become an alternate member shall submit a letter of intent to the Board for its approval. Any existing alternate member desiring an additional term must submit a letter of intent to the Board.

4.3 Attendance: Any member unable to attend a meeting shall notify the zoning and planning administrator and chair as soon as possible in advance of such meeting. The zoning and planning administrator and chair will notify the alternates that a primary member or scheduled alternate member will be absent from a meeting. Alternate members not sitting in place of a primary member are encouraged to attend the meetings.

4.4 Recusal/Conflict of Interest: Disqualification of board members is governed by RSA 673:14. If any member finds it necessary to recuse or disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the chair as soon as possible so that an alternate member may be asked 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 ask 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. Either the chair or the member recusing/disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself/herself from the Board table during the public hearing and during all deliberations on the case, but may participate as a member of the public.

4.5 Vacancies: Vacancies for primary Board member(s) occurring at other than at the expiration of a term shall be filled by the Board appointing an alternate to the position until the next election.

Section Five: Powers and Duties

5.1 Building Code Board: These rules shall govern the procedures by which the Rye Zoning Board of Adjustment shall conduct its business. In accordance with RSA 673:1(V), the Board 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. The powers of the Board shall be those authorized under RSA 674:33, as modified by RSA 674:34. The powers of the Building Code Board of Appeals shall be those authorized under RSA 674:34. No person holding at the same time the office of Selectman shall serve on the Board.

5.2 Building Code Appeals: For the purposes of this code, the powers of the Building Code Board of Appeals are vested in the Zoning Board of Adjustment established under the terms of

the zoning ordinance of the town of Rye. Any person aggrieved, or any town official, may take an appeal to the Zoning Board of Adjustment from any decision of the building inspector dealing with the building code, to vary the application of any provision of the building code to any particular case when in its opinion the enforcement of the building code would do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest.

In exercising its powers in such appeals the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the administrative official from whom the appeal is taken.

5.3 Administrative Appeals: The board may hear and decide applications for administrative appeals, variances, special exceptions and equitable waiver of dimensional requirements in accordance with the provisions of RSA"s 674:33-a, as amended.

5.4 Flood Ordinance Appeals: The Board may hear and decide applications for administrative appeals and variances per Item X of the Floodplain Development and Building Ordinance (Flood Ordinance).

Section Six: Meetings

6.1 Regular Meetings: Regular meetings of the Board shall customarily be held in the courtroom of the Rye town hall, 10 Central Road at 7:00 p.m., on the first (1st) Wednesday of each month. The chair may cancel a regular meeting only if there are no applications pending for reasons of (1) no filings, (2) request(s) to withdraw or request to otherwise defer a public hearing on an application that has been filed by such applicant, (3) a quorum of board members will not be present. The Board may schedule its monthly meeting on other than the first Wednesday of a particular month for cause such as conflicts with holidays or other meetings of local interest or an anticipated unavoidable absence of a quorum.

6.2 Other Meetings: Work meetings may be held on the call of the chair or at the request of three (3) primary Board members, provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.

6.3 Quorum: A quorum for all meetings of the Board shall be three (3) members, including alternate members sitting for primary members. If any primary member is absent from any meeting or hearing or disqualifies himself/herself from sitting on a particular case, the chair shall designate an alternate member to sit in place of the absent or disqualified member. Such alternate member shall be in all respects a full member of the Board while so sitting.

The Board will make every effort to ensure that a full five (5) member Board is present for the consideration of any appeal/petition. If for any reason there are fewer than five (5) members, the applicant shall have the discretion to accept less than the five (5) member Board or to defer the case without prejudice to a date certain, with the understanding that concurring vote of at least three (3) members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter in which it is

required to pass, per RSA 674:33, III. Sitting members on any application may be different upon rehearing or continuation of the application.

6.4 Public Meetings: Every attempt will be made by the Board to receive testimony at a public hearing and render a decision on all applications in a timely manner. If, in the opinion of the chair, it appears that all of the business of a regular meeting cannot reasonably be started before 10:00 p.m. with the concurrence of a majority of the Board members present, the Board at its discretion may opt to defer action on such application(s) which business cannot be completed to the next scheduled Board meeting. In special circumstances, the board may elect by a majority of the Board, to hold a special meeting outside the normal meeting schedule to accommodate the applicant, Board members, and other parties that may be affected.

The Board will not ordinarily commence consideration of an application, or other matter filed by an applicant or other member of the public after 10:00 p.m. and the meeting shall end no later than 11:00 pm unless a majority of Board members present waive these provisions. However, if the applicant or any abutter objects to the Board hearing a specific case after 10:00 p.m., then the Board will table that application until the next regularly scheduled meeting.

6.5 Non-Public Meetings: All meetings of the Board shall be open to the public except for non-public sessions which shall be held in accordance with RSA 91-A:3 (the Right-to-Know Law). Before entering into a non-public session, the Board shall cite one of the specific statutory reasons for the non-public session by a motion with the role call vote to be recorded. While in non-public session, the Board is limited to consideration of the subject which was the reason for entering the non-public session. Minutes of non-public sessions must be maintained and be disclosed to the public as prescribed by statute, unless two-thirds (2/3rds) of the members vote to seal the minutes after a determination that divulgence of the information likely would affect adversely the reputation of any person other than a member of the Board itself or render the proposed action ineffective.

Section Seven: Meeting Procedure

7.1 Order of Business: The chair reserves the right to modify the order of agenda items as appropriate; however, the order of business for regular meetings shall normally be as follows:

a. Call to order
b. Pledge of allegiance (voluntary per intent of RSA 194:15-c)
c. Roll call/introduction of members
d. Minutes of prior meeting(s)
e. Meeting conduct explained
f. Public hearings
g. Unfinished business
h. New business
i. Communications
j. Miscellaneous
k. Public comment
l. Other
m. Adjournment

7.2 Public: Any member of the public shall be permitted to observe, record, film and/or videotape meetings so long as they are not disruptive and do not unreasonably interfere with the conduct of the Board's business. In the event of disruptions, the chair, with the consent of a majority of the Board, may order the offending person(s) to leave the meeting room and cease the activities causing the disturbance.

7.3 Abutters: At the hearing any party may appear in person or by agent or by attorney. The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are directly affected by the proposal under consideration. The Board may hear other persons as it deems appropriate.

Section Eight: Application/Decision

8.1 Administrative Appeal: An applicant aggrieved by a decision of an administrative official has the right to appeal under RSA 676:5.

8.2 Application for Relief Form: Each application for relief to be heard by the Board shall be submitted on forms approved by the Board. The forms are available from the zoning administrator.

8.2.1 Application: The application form(s) with instructions can be obtained from the building and planning offices or from the town website. (If the application requires relief from the wetland ordinances, the applicant is required to attend a conservation commission meeting for their opinion first.) The application shall be presented to the zoning administrator who shall record the date and time of receipt. The application shall set forth in reasonably complete detail all matters for which relief is being requested and the reasons supporting same. All prior actions by the Board shall be cited and copies of decisions or orders attached. Relief cannot be granted by the Board unless specifically requested. Except for good cause shown, the Board will not normally grant relief unless the applicant is in substantial compliance with all prior grants of relief and/or a condition attached thereto affecting the subject parcel; and further, demonstrates to the satisfaction of the board that all taxes, assessments, or fees due or owing to the town have been timely paid.

8.2.2 Submittal: Applicants shall enclose an original and seven (7) copies of all communications to the Board. All original communications/documents shall be kept in the permanent town records.

8.2.3 Expenses: All expenses incurred by the Board in connection with any application shall be borne solely by the applicant, unless otherwise waived by the board for reason of special circumstance, upon written request of an applicant (RSA 676:5, IV)
The Board may request that the applicant, at the applicant's expense, provide additional technical information and/or testimony by qualified experts deemed necessary by the Board for it to make an informed decision (RSA 673:16.II). Fees due must be submitted at the time of the filing of the application or the application will not be accepted. If any

remittance is dishonored by a financial institution, the filing will be deemed null and void.

8.2.4 Abutters: Abutters, persons with a direct interest in the application, and town officials or their agents may submit evidence relating to the application.

8.3 Public Notice: Public notice of all Board meetings shall be posted on the town website and in at least two public places, such as at the town hall, library and Rye post office, not less than seven calendar days (7) before the date fixed for the hearing. Newspaper publications of notice as prescribed by statute shall be posted in The Portsmouth Herald. The posting notice shall be in the name of the clerk. All persons identified in RSA 676:7 as persons who have an interest in a matter shall receive notification of a public hearing prepared by the zoning administrator as herein prescribed.

8.4 Notice to Abutters: Notice shall be made by certified mail, return receipt to all abutters not less than seven calendar (7) days before the date of the hearing. Notice shall also be given to the planning board, city/town clerk and other parties deemed by the Board to have special interest, including but not limited to the conservation commission.

8.5 Site Visits: Upon the filing of an application, an applicant expressly agrees that any member of the Board may during normal business hours visit, enter upon, inspect, or make observations of the site which is the subject of the application for relief, provided that such visit(s) shall not include entry into the primary dwelling without further approval of the applicant. Members are encouraged to make such site visits before the public meeting. The Board may vote to continue the hearing of an application to allow members an opportunity to perform a site visit. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board. At no time shall more than two (2) members of the board be present simultaneously during a site visit unless the site visit has been called as a public meeting and proper public notice as required by New Hampshire statutes has been given. Other than observations of the site, no evidence shall be taken and there shall be no discussions among the two board members of the evidence or deliberations at such site visits. There shall be no discussion with the applicant or his/her agents, abutters or others who may be present of any aspect of the application.

8.6 Public Hearing: Public hearings shall be considered in the following manner:

a. The application summary is read;
b. Applicant/designee presents his or her case;
c. Those in favor speak;
d. Those opposed speak;
e. Applicant/designee may rebut opposition testimony;
f. Those opposed may rebut any new rebuttal testimony;
g. The Board will hear any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Ordinance and state zoning law.
h. If there are no further questions, the public hearing on that docketed item is closed and the board deliberates.

8.7 Deliberations: Any Board member may at any time request of the chair the right to make inquiry of the applicant, the applicant's representative, or any other persons speaking to the matter. Abutter(s) and other persons whom the Board deems appropriate may be recognized to speak by the chair at the public hearing and/or may testify in person at the public hearing. Persons requesting to speak shall direct all comments to the chair. All speakers shall state their name and address in the case for the record. The chair may refer comments or questions to any other Board member for response.

When a motion related to the disposition of a case is made and seconded, it shall be stated by the chair before debate. At the request of the chair or any member of the Board the motion shall be in writing. A motion may not be withdrawn or amended by the mover without the consent of the second and approval of a majority of the Board. Determinations on any matter before the Board shall require the concurrence of a majority of the members present and voting. If the Board is unable to take action, it shall continue the matter to a date certain for further consideration.

8.8 Decisions: The Board shall decide all cases within thirty (30) days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. Notice of the decision will be made available for public inspection within 5 business days, as required by RSA 676:3. If the appeal is denied, the notice shall include the reasons therefore. In its discretion, the Board may reserve making a decision on an application on the night of the public hearing based on the need to seek additional evidence or testimony, in which case the matter will be continued to a date certain.

8.8.1 Notice: The chair will notify the applicant of the decision of the Board and his/her right to appeal. Notice of the decision will be made available for public inspection within the time limits as specified by RSA 676:3. If the appeal is denied, the notice shall include the reasons therefore.

8.8.2 Conditions: The Board has the authority to attach reasonable conditions in the granting of any relief. The reasons for conditions include, but are not limited to, those necessary to preserve the spirit of the ordinance, such as conditions to protect the adjacent landowners, preserve the essential character of neighborhoods, secure the basic values of the master plan, and attempt to provide that substantial justice is done. Reasonable conditions shall also include the authority to make the decision conditional on placing on deposit with the town, in the manner provided by RSA 673:16 (II), sums of money to ensure compliance with such conditions. The conditions must be adhered to; otherwise the granting of the appeal will be revoked. If the Board finds it necessary to attach conditions, they must be spelled out in detail in the Board's decision.

8.8.3 Applicant's Withdrawal or Request for Continuation: If the Board decides to continue an application due to time constraints or the need for additional information from an applicant; a date, time and location will be established. If the applicant withdraws without prejudice, or continues their application more than once, they will be responsible for the application and abutter notification fees.

8.8.4 Time Limits: Time limits for an applicant to meet conditions of approval may be imposed by the Board as a condition of such approval. Such determinations will be made on a case-by-case basis as the board deems necessary and appropriate.

Section Nine: Recordings/Minutes:

9.1 Recording: All meetings are recorded in one form or another. All recordings shall be preserved for at least three months unless the minutes have not yet been approved or a request for a rehearing has been submitted or there is a court appeal. The approved minutes will become the official record of the hearing and filed with the town clerk within five (5) business days of the meeting in accordance with NH RSA 91-A:4.

9.2 Rehearing: The Board may grant a motion for rehearing provided such motion is filed within the appeal period of the original decision, which is 30 calendar days from the day the decision was made. The motion must be made in accordance with RSA 677:2 and RSA 677:3.

9.2.1 Rehearing Discussion: The Board shall discuss the rehearing motion request at a public meeting but shall not take testimony at the meeting. The Board will make a decision whether or not to grant the rehearing. If the rehearing request is granted, the applicant's decision is no longer valid. There is no time frame for the applicant to come back before the Board, but when they do it is considered a new application and all applicable fees and notification are in effect. Any person aggrieved by any order or decision of the Board may apply by petition to the superior court within 30 days after the date upon which the Board voted to deny the motion for rehearing.

The board may consider written objections to a motion for rehearing which are filed with the board at least three (3) days prior to the date on which the board will be considering the motion for rehearing.

Section Ten: Board Communications:

10.1 Written Communication: All communications to the Board shall be in writing and submitted to the zoning administrator. Persons wishing to address the Board and/or present evidence are encouraged to submit their comments in writing, signed, to the Board as soon as possible in advance of the meeting at which the matter is to be considered.

10.2 Availability: All communications from an applicant, an abutter or interested person shall be available to the Board and public at the town hall within twenty-four (24) hours of receipt by the zoning administrator.

10.3 Board Packets: A copy of any such material shall be given to each primary Board member and/or alternate member. In addition, one copy shall be placed in the conservation commission mailbox at the town offices of any applications that involve their jurisdictional interests.

10.4 Ex-Parte Communications: Primary Board members and alternate members shall bear in mind the "quasi-judicial" nature of their duties and shall avoid and/or report any attempts by applicant(s) or other interested persons or parties to hold ex parte communications.

10.5 Board Member to Member Communication: Other than for scheduling, administration, or exchange of publicly available documents not produced or generated by or for the Board, primary Board members and/or alternate members shall not communicate by e-mail as to the board's active applications and/or decision making.

E-Mail: E-mail as well as written communications shall be considered unsworn testimony until attested by its author. Any E-mails from abutters or interested parties will be shared with the applicant.

Section Eleven: Records:

11.1 Records: The minutes of the Board shall be kept on file by the town clerk and made available for public inspection at the town offices in accordance with RSA 673:17.

11.1.1 Applications: Original application, correspondence, and all submitted documentation by the applicant and/or abutters will be maintained in the files kept in the building department. The town's zoning administrator shall maintain and preserve a record of all meetings transactions and decisions of the Board and perform such other duties as the board may direct by resolution.

11.2 Official Minutes: The official minutes, notice of decisions and agenda will be maintained by the town clerk.

11.3 Transcriptions: Any person desiring a transcript of the recording must pre-pay the expense of the transcription.

Section Twelve: Amendments/ Waivers:

12.1 Amendments: These rules of procedure may only be amended or revised by a majority vote of the primary Board members, and only upon due notice to all Board members. A primary board member may waive his/her right to vote on an amendment and be replaced by an alternate, provided that the primary Board member notifies the chair. Any such waiver shall be recorded in the minutes of the Board.

12.2 Exception: 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.

Section Thirteen: Joint Meetings and Hearings:

Joint Meetings: RSA 676:2 provides that the Board may hold joint meetings or hearings with other land use boards, including the Planning Board. Each Board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

RULES OF PROCEDURE

These Rules of Procedure will be enacted (as amended) by affirmation vote of the Rye Zoning Board of Adjustment on Wednesday, January 8, 2014

Frank Drake, Chairman

Ray Jarvis, Vice-Chairman

Shawn Crapo, Clerk

Patricia Weathersby, Member

Burt Dibble, Member

Paul Goldman, Alternate Member

Charles Hoyt, Alternate Member

Rules of Procedure
RECORD OF CHANGES
Revised 1/8/2014