

SANDOWN ZONING BOARD OF ADJUSTMENT
Bylaws & Rules of Procedure

I. Purpose & Authority

- A. The Sandown New Hampshire Zoning Board of Adjustment, hereinafter referred to as the "Board", operates under the strict guidelines contained in the State of New Hampshire RSA 674:33 and 675:5-7. The procedures are not discretionary; they are limiting and mandatory. The Board does not change, alter or amend the Sandown, New Hampshire Zoning Ordinance, but considers each application on the basis of the State's statutory requirements and the Ordinance, which has been enacted by the local legislative body.
- B. These Bylaws and Rules of Procedures are adopted under the authority of New Hampshire Revised Statutes Annotated, Chapter 676:1 as amended, and with reference to the Sandown Zoning Ordinance and the Tax Map of the Town of Sandown, New Hampshire.
- C. The general governing rules for the Sandown ZBA are laid out in Article VI of the Sandown Zoning Ordinance. These bylaws are intended to codify rules of procedure not enumerated in the Zoning Ordinance. "Chairman" and similar terms are used as designations of office and not of gender.

II. ZBA Member Terms & Duties

A. Full members

1. In accordance with RSA 673:3 and Article VI of the Sandown Zoning Ordinance, the Board shall consist of five full members who are appointed by the Board of Selectmen for a term of three (3) years. All terms shall begin in March of each year and shall be staggered in accordance with RSA 673:3 and 673:5, so that no more than 2 appointments occur annually except when required to fill vacancies.
2. All full members shall continue to serve until reappointment or a successor has been appointed. However, no member shall serve as a holdover for more than 90 days. If at the end of the 90-day holdover period the board of Selectmen has not appointed or re-appointed a member, the office shall be deemed vacant.
3. All members must be residents of Sandown, New Hampshire and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chairman as soon as possible. Members will participate in the decision making process and vote on all motions under consideration.
4. Any regular member who is absent for three (3) consecutive meetings, unless there are extenuating circumstances or prior approval, shall be recommended by the Board of Adjustment to the Board of Selectmen, in writing, for removal from the Board.

B. Alternates

1. In accordance with RSA 673:6 and Article VI of the Zoning Ordinance, the board shall also include up to three Alternate Members who are appointed by the Board of Selectmen for a term of three years. All terms shall begin in

March of each year and shall be staggered such that no more than 1 appointment occurs annually except when required to fill vacancies.

2. All alternates shall continue to serve until reappointment or a successor has been appointed. However, no member shall serve as a holdover for more than 90 days. If at the end of the 90-day holdover period the Board of Selectmen has not appointed or re-appointed a member, the office shall be deemed vacant.

3. Alternates must be residents of Sandown, New Hampshire and are expected to attend meetings and be familiar with the workings of the Board so that they will be ready to serve whenever they are requested to serve in place of a member.

4. Alternates may participate in the discussions but may not vote unless designated as a voting member by the Chairman.

5. Any alternate member who is absent for three consecutive meetings, unless there are extenuating circumstances or prior approval, shall be recommended by the Board of Adjustment to the Board of Selectmen for removal from the Board.

C. Officers of the Board

1. A Chairman will be elected annually at the next appropriate meeting after the March appointment of board members. The Chairman conducts hearings and meetings, acts as official spokesman for the Board, and designates alternates as voting members when deemed appropriate. The Chairman may call special meetings, provided that at least 48 hours notice is given each member before a meeting is held. The Chairman will be required to call a meeting within 10 days of receipt of a written request from any two members of the Board. The Chairman is responsible for budget proposals and financial control, and is the departmental authority for expenditures against the Board budget.

2. A Vice Chairman will be elected annually at the next appropriate meeting after the March appointment of Board members. The Vice Chairman or Board designate fulfills the duties of the Chairman in the Chairman's absence.

III. Application Process

A. Appeals

Appeals from an administrative decision taken under RSA 676:5 shall be filed and stamped by the Selectmen's Office within 30 days of the decision.

B. Filing of Application

1. Each application for a hearing before the Board shall be made on forms provided by the Board.

2. All forms and revisions prescribed thereto, shall be adopted by resolution of the Board as described in Article XI and are considered attachments to and thus part of these Bylaws and Rules of Procedure. These consist of the following:

a. Applications

b. Applicant Checklist

c. Informational Sheet

3. The Selectmen's Office will maintain copies of applications, checklists and explanatory material (informational brochures) provided by the Board, along with up-to-date tax maps to be used for generation of abutters lists
 4. The Selectmen's Office will receive and date-stamp applications submitted during office hours. Filing and date-stamping of the application by the Selectmen's Office does not constitute receipt of a properly completed application by the Board.
- C. Information required with Application (provided by the applicant)
1. The application (reference attachments) lists the information necessary to conduct a thorough hearing of any application. For any specific appeal, not all elements may be required. However, an application submitted with insufficient context and supportive documentation will be denied. Since a prescriptive list of elements tailored to each type of case may be inadequate or misleading, the Board requires that applicants adequately describe who owns the property, where it is located, and to give an adequate description of it that is relevant to the case. The applicant must also describe what the proposed use is and the relationship to the property, including sketches, plot plans, pictures construction plans, etc., and must explain why the proposed use requires an appeal to the Board of Adjustment. If there are specific requirements in the Zoning Ordinance, the application must address how these requirements are met. The application should make it clear why the applicant believes the appeal should be granted. The list of abutters is a critical element—this is the basis for both the envelope preparation and postage for the legal notices and for the fees levied by the Board. It is the applicant's responsibility to ensure that sufficient information is provided with the application.
 2. Several types of Special Exceptions require reports or approval from other agencies—e.g.; Town Engineer, Sandown Conservation Commission, NH DES, Sandown Health Officer, etc. Agencies providing these reports thus generated are based on the plans provided to the agency, and it is critical that the Board can verify that the same plans submitted to the agencies are the plans under review by the Board. To clarify this process, the applicant must follow the below procedures:
 - a. The same information that is provided to the agency will be included in the application, and will bear a title, revision number and/or approval date
 - b. The agency report must include a reference to the title and revision number and/or approval date.
 - c. The original agency report will be provided directly to the Town of Sandown, and the Town will stamp receipt of and distribute copies as necessary.
 - d. Unstamped copies of reports or reports that do not bear clear reference to the same set of plans included in the application will be inadmissible as evidence before the Board.
- D. Application Review and Acceptance/Rejection Procedure

1. At each meeting, the Chairman will present all applications. These will consist of applications received at least five business days prior to the meeting through the Selectmen's Office.
2. The Board will review applications to determine if sufficient information is present to hear the case, and to validate the abutter's list. (Note: although preliminary validation may have been provided by the Selectmen's Office to expedite the application, it is the Board's responsibility to provide final review). Completed applications for failed septic systems may be accepted without full Board review.
3. If the application is deemed complete, the Board will vote to formally accept the application.
4. If there is insufficient information provided to hear the case, the Board has two options:
 - a. In the case where there is a strong possibility that information could be provided or requirements met by the time of the next scheduled meeting, the Board may accept the application and schedule the case contingent upon the Administrative Assistant or Chairman notifying the applicant in writing to explain the discrepancies and verifying with the applicant that resolution will be provided by the scheduled meeting. This is at the discretion of the Board, and limited by the following conditions:
 - i. Verification must be obtained prior to the deadline for legal notification submissions to the area newspapers, as determined by the Administrative Assistant, or the contingency will not be met and the application approval will be deemed to have failed.
 - ii. If verification is obtained but the information is not provided by the scheduled meeting, the application will be considered to have been abandoned. If the applicant wishes to pursue the matter, a new application must be submitted and fee paid.
 - b. The Board may vote to deny the application, in which case the applicant must be notified by the Chairman in writing explaining the discrepancies. The application will not be considered again for acceptance until the next regularly scheduled meeting. Since no legal notification expenditures are made, no reapplication fee will be imposed.
5. A vote to accept an application constitutes formal receipt by the Board, and the application must then be heard by the Board within 30 days.

IV. Notice of Hearings

- A. The applicant and all abutters shall be notified of case hearings by certified mail with return receipt. The notice must be mailed at least 10 days prior to the hearing in order to ensure the seven-day minimum notification limit is met.
- B. The general public shall be notified of case hearings by publication in the Legal Notices section of one or more of the *Union Leader*, the *Tri Town Times*, the *Eagle Tribune*, or the *Carriage Towne News*. The notice must be published at least five calendar days prior to the hearing.

- C. All notices shall include name of the applicant, description of the property (tax map/lot number and street address), owner of the property (if different from the applicant), action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made and the date, time, and place of the hearing.
- D. The applicant may not amend the application after the legal notice has been transmitted to the newspaper for publication.
- E. Public notice of all Board meetings will be posted at two entrances to the Sandown town offices, visible from the exterior of the building, at least 24 hours in advance of the meeting. This minimum notification time excludes Sundays and legal holidays. The notice will indicate the nature of the business to be discussed.
- F. Whenever the Board receives an application which it feels may have a potential for regional impact, it must give notice of the Public Hearing by certified mail at least fourteen (14) days in advance to all affected municipalities and the regional planning commission, in accordance with RSA 36:57.
- G. 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. Fees are set in Article X below.

V. Meeting Time & Places

- A. Meetings shall generally be conducted on the last Thursday of each month at 7:00 p.m. at the Sandown Town Hall.
- B. Other meetings may be held on call of the Chairman provided public notice is given in accordance with Article IV of these Bylaws. In addition, notice to each member, including alternates, shall be provided within the same time constraints either in writing (including electronic transmission) or by telephone.
- C. Case hearings will be held within thirty days of the receipt of an approved application.

VI. Quorum and Disqualification

- A. A quorum shall consist of three voting members of the Board, which may include alternates sitting in for members.
- B. In accordance with RSA 673:14, no member of the Board shall sit in hearing on any matter in which they may be personally or financially interested, nor shall they vote on the determination of any appeal or application unless they have attended the hearing. Specifically, a member must step down from an appeal if the member:
 - 1. Has a direct personal interest or pecuniary interest in the outcome, which differs from the interest of other citizens in the community.
 - 2. Is an abutter.
 - 3. Has publicly taken a position on the application other than in the course of ruling on another similar application
 - 4. Is related to the applicant
 - 5. Is employed by or employs the applicant or property owner
 - 6. Is prejudiced to any degree regarding the appeal

If uncertainty arises as to whether a member has a conflict, the board must, upon the request of the Member or another member of the Board, vote upon the question of whether that Member should be disqualified. Any such request shall be made prior to or at the commencement of any required public hearing. Such a vote is advisory only and non-binding.

A member with a conflict should inform the Chairman, generally state what the conflict might be (e.g.; financial, legal, etc). The Chairman shall announce the disqualification and appoint an Alternate to fill the seat. The disqualified Member shall absent themselves from the Board table during the public hearing and all deliberation on the appeal. The minutes of the Board should reflect that the Member was disqualified and the reason given, that the Member did not participate in any discussions of the appeal as a Board Member, that the Member was absent from the vote, and when the Member returned to the Board.

VII. Meetings—Order of Business & Procedures

A. Call to order by the Chairman

B. Roll Call/Designation of Voting Members

C. Public Hearings, which will be conducted under the following rules:

1. In order for an appeal to be granted, the burden of proof is on the applicant to demonstrate that each of the applicable requirements has been met.
2. Members of the Board may ask questions at any point during testimony, and may request, through the Chairman, to have any party to the case speak a second time.
3. Any parties to the case wishing to address another party to the case must do so through the Chairman.
4. Any party may appear in person or be represented by counsel or designated agent.
5. All presentations and testimony to the board are considered to be under oath. At the discretion of the Chairman, any witness may be required to swear that their statements of facts are true.
6. All those who offer input to the Board shall state their name and address, and indicate whether they are a party to the case or an agent or counsel of a party to the case.
7. The concurrent vote of three voting members shall be necessary to decide in favor of any matter before the Board. Any appeal receiving fewer than three affirmative votes shall by result be denied as failing to meet all criteria necessary for the appeal.
8. The Board reserves the right to rescind the granting of any appeal, should it come to the attention of the Board that an applicant and/or agent misrepresented a material fact which led the Board to grant their appeal.
9. Case hearings will be conducted according to the following procedure:
 - a. The Chairman will read the public notice for the meeting, and report on how public notice and personal notice were given.
 - b. If less than a full Board of five members is present, applicants must be notified of their right to postpone their hearing until a full Board is

- 271 present. If the applicant elects to proceed, the case will be heard and
272 decided.
- 273 c. The applicant shall be called to present his appeal, and testimony will
274 be accepted from any others in favor of the application.
- 275 d. Testimony will be accepted from any opposed to the application.
- 276 e. The applicant and those in favor of the appeal shall be allowed to
277 speak in rebuttal.
- 278 f. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- 279 g. Any person who wants the Board to compel the attendance of a
280 witness shall present such request in writing to the Chairman not later
281 than three days prior to the public hearing.
- 282 h. The Board will hear with interest any evidence that pertains to the
283 facts of the case or how the facts relate to the provisions of the
284 Sandown Zoning Ordinance or to state zoning law.
- 285 i. The Chairman or designate shall present a summary setting forth the
286 facts of the case and the claims made for each side. Opportunity shall
287 be given for correction from the floor.
- 288 j. The Board will close the hearing on the appeal to further public input.
- 289 k. The Board will reach a decision within 14 days of the hearing. The
290 Board will approve, approve with conditions, deny the appeal, or defer
291 its decision.
- 292 D. Decisions on appeals under consideration from prior meetings (e.g.; continuances
293 or tabled cases)—applicable elements of the above case hearing process will be
294 followed.
- 295 E. Review, modification if necessary, and acceptance of prior meeting minutes.
- 296 F. Review and acceptance or denial of new applications (reference Article III
297 above).
- 298 G. Other business
- 299 H. Adjournment
- 300

301 **VIII. Notice of Decision and Meeting Minutes**

- 302 A. Notification of decision will be sent in writing to the applicant, building inspector,
303 planning board, selectmen, and town clerk. Notification will also be posted at
304 Town offices within 5 days of the decisions, and will be available at the
305 Selectmen's Office for the general public and the press in accordance with RSA
306 676:3.
- 307 B. The notification of decision will include the same information as the notice of
308 hearing as well as stating the decision reached and the right of any aggrieved
309 parties to file a motion for rehearing (if applicable). If the appeal is denied or
310 deferred, the notice shall include the reasons therefore.
- 311 C. If an appeal is granted, the decision will also state in detail what conditions and
312 safeguards are required, and any time constraints on the validity of the decision.
313 The enforcing agency for these conditions and safeguards is the Sandown Board
314 of Selectmen or their designate.
- 315 D. In accordance with RSA 91-A:2, minutes of the meeting will be available to the
316 public in draft form within 7 days of the meeting by being posted at Town offices

on the bulletin board outside the Selectmen's Office. Meeting minutes will include names of board members, persons appearing before the board, and a brief description of the subject matter. Minutes will be approved at a subsequent meeting by affirmative vote of at least three members or alternates who were present at the subject meeting.

IX. Storage of Records

- A. Copies of meeting minutes and notices of decision will be permanently filed in the office of the Town Clerk, and shall be available for public inspection in accordance with RSA 673:17.
- B. The original Board case file will be placed in the tax map file for the property affected. In situations where the decision applies to multiple lots, the case file will be placed in one of the tax map files and reference cards placed in the other tax map files, indicating where the master file is stored.

X. Finances

- A. The Board is funded by user fees, and is expected to neither require a Town subsidy to operate nor to exact more in fees from applicants than is required.
- B. The Board has the authority to levy fees to cover its operating costs in accordance with its estimates as described below. Revisions to application fees must be by the process described in Article XI.
- C. The basis for fees includes administrative costs associated with generating legal notices and abutter letters, stuffing envelopes, trips to Post Office and Town Hall for posting (if applicable), meeting minutes and records preparation, publishing costs for legal notices, seminar/training costs for Board members and alternates, and administrative staff, books and reference materials.
- D. Application and abutter fees are set at the following rates, and the entire fee assessed is to be provided with the application filing:
 - 1. Base Application Fee: \$175
 - 2. Abutter fee (for each abutter): \$5, plus postage

XI. Amendment to Bylaws & Rules of Procedure

These Bylaws & Rules of Procedure may be amended by a majority vote of all members present and voting, provided that such amendment is read and approved at two public meetings.