Moultonborough Zoning Board of Adjustment Policies
Town of Moultonborough,
New Hampshire

Approved by The
Moultonborough Zoning Board of Adjustment
From June 20, 1990 Through March 21, 2018

Inquiries Should Be Made to the Moultonborough Zoning Board of Adjustment For Revisions and Deletions

2018 Zoning Board of Adjustment
Bylaws and Policies Signed April 4, 2018

Robert Stephens, Chairman

Ken Bickford, Vice Chairman

Robert St. Peter

Nick DeMeo

Richard Jenny

Moultonborough Zoning Board of Adjustment

Bylaws of the Moultonborough Zoning Board of Adjustment

I. Name

The name of the Board shall be "The Moultonborough Zoning Board of Adjustment" as authorized by the Zoning Ordinance adopted at the Special Town Meeting of October 15, 1985.

II. Personnel

The Zoning Board of Adjustment shall consist of five members, elected by the public and up to three alternates, to be appointed by the elected members of the Board. Selection, qualification, term, removal of members and filling of vacancies shall conform to Chapter 673 New Hampshire Revised Statutes Annotated.

III. Organization

The Zoning Board of Adjustment shall meet the first meeting following Town Meeting and shall be called to order by the member with longest tenure in years of service present. At this meeting, the Board shall organize for the election of one of its members as chairman, and one of its members as vice chairman. The Board shall appoint the Land Use Department staff to act as Secretary to the Board.

IV. Meetings RSA 673:10 Scheduling of Meetings

A. Meetings of the Zoning Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board may determine.

B. A majority of the membership of a local land use board shall constitute the quorum necessary in order to transact business at any meeting of a local land use board.

The Zoning Board of Adjustment meetings, when required, will normally be held on the first and third Wednesdays of the month.

V. Rules of Order

At each regular meeting, the order of proceedings shall be as follows:

A. Call to Order

B. Pledge of Allegiance

C. Seating of Alternates, if necessary

D. Approval of Minutes

E. Hearings

F. Correspondence

G. Unfinished Business

H. Adjournment

A motion shall be carried by a majority of members present and voting in the affirmative, unless otherwise specified in statute.

Any rules and/or policies may be suspended at any meeting, until the next meeting, or for a shorter period of time by vote of a majority of the members present.

VI. Hearing.

The conduct of hearings shall be governed by the following rules:

1. The Chair shall call the hearing in session by reading the public notice referring to the application.

2. The applicant (or the applicant's counsel or agent) shall be called by the Chair to present the application to the Board. If there are less than five (5) members, (but not less than a quorum defined as three (3) members), of the Board sitting on a particular application, the Chair shall give the applicant the option of continuing the hearing until there is a full Board. If the applicant elects to proceed with less than a full Board, chair shall notify the applicant that less than a full board will not be grounds for a rehearing in the event the application is denied. The chair will require the applicant to state his/her decision prior to proceeding with the hearing.

3. Members of the Board, including unseated alternates, may ask questions at any point during testimony after recognition from the Chair.

4. a. Anyone who wishes to speak and is not a member of the Board or the staff advisor to the Board, shall be required to state his or her name and address and indicate whether he or she is a party to the case, an abutter or an agent or counsel to a party or an abutter.
   b. Any party who wants to ask a question of another party to the case must do so through the chair.

5. a. Upon completion of the applicant's presentation and questions from the board, the chair will open the hearing for public input (public hearing portion).
   b. The chair will ask those in in favor to speak.
   c. The chair will ask for those in opposition to speak.
   d. The chair will allow the applicant time for rebuttal.
   e. The Board may request additional information from speakers prior to the close of the public hearing portion.

6. Upon completion of the final rebuttal, the chair shall close the public hearing and the board shall deliberate on the application. At this time, no further comment originating from applicant or abutter shall be taken. Any unseated alternates may remain and participate in the deliberative session but may not vote unless seated. The chair shall read each criterion soliciting the opinion of each board member on whether or not the applicant's testimony adequately addressed the criteria.

7. At the conclusion of the deliberative discussions, the chair shall state the board is returning to the hearing portion. The chair will provide an opportunity for the applicant to refute any comments heard during the deliberative session prior to taking a vote on the application.

8. If at any point during the hearing the applicant wishes to withdraw, it shall be treated as a formal request to the Board for a motion to accept the requested withdrawal. The applicant shall state in their request whether they are requesting a withdrawal without prejudice, which means that they reserve the right to resubmit, or with prejudice, which means they give up their right to resubmit the same application. The Board may choose to deny the request or to make the motion for the Board to consider and vote upon based

on the unique factors of the hearing or hearings. The Board may, at its discretion, waive future application fees, but in no case may it waive notification or publication fees of any future resubmittal.

VII. Decisions.

Decisions of the Board shall be governed by the following rules:

1. Any decision made by the Board that is in favor of the applicant shall require three (3) votes; this applies to the approval of any conditions that are placed on an application.

2. A motion to grant or deny the applicant's request shall be made by a SEATED member and seconded by a SEATED member. The motion shall instruct town staff to prepare a Notice of Decision that includes the consensus opinion of the Board on why the applicant's testimony and application adequately addressed or did not address each of the criteria. The Notice shall include any.conditions placed on the approval by the Board. The motion shall also include continuing the hearing until the next scheduled hearing date. Only seated members are authorized to vote on this motion.

3. All decisions shall be documented on a Notice of Decision form that is approved by the ZBA.

4. The application shall be granted or denied based upon a majority vote by the members of the Board. In the event an application is heard by only three (3) members, an affirmative vote shall require all three (3) votes.

5. Notification of the decision shall be sent to the applicant and shall be filed in the records of the Board and shall be available to the public within five (5) business days.

VIII. Alternates.

Alternate members should attend all meetings to familiarize themselves with the workings of the Board so that they are ready to serve whenever a regular member is unable to fulfill his or her responsibilities. Alternate members shall substitute for regular members on any case when a regular member is absent or disqualified pursuant to RSA 673:14 and the Chair designates them to do so. The Chair shall designate alternates on a revolving basis so as to ensure that every alternate member serves on a regular basis in order to gain experience. If the Board defers action on an application to a later date, and schedules a date for continuance, then for purposes of continuity and fairness to an applicant, if an alternate is needed, the Chair shall seat the alternate that originally sat on the preceding hearing.

IX. Voting members.

Voting members shall be announced by the Chair prior to the consideration of the agenda item. Alternate members who are not voting may fully participate during the presentation of applications, the public hearing, and the deliberative session as described above. Should any member recuse themselves for the hearing of a specific case, he/she shall leave the Board and sit with the public.

X. OFFICERS

The Chairman shall call the meeting to order, preside over the deliberations, and see that all proceedings are in accordance with the Rules of the Town of Moultonborough, and the Laws of the State of New Hampshire. He shall present, assisted by the Secretary, a yearly report, appoint committees of resident citizens including one member of the Zoning Board of Adjustment who shall act as Chairman, and perform other duties incumbent upon the presiding officer.

The Secretary shall cause to be kept a full and accurate record of proceedings of all meetings. At each meeting, the Secretary shall have the book of record at hand and record the names of the members present. The Secretary shall issue notices of all meetings and notify all committees of their appointment. The Secretary shall conduct correspondence and fulfill such duties as the Chairman may specify. In the absence of the Chairman and Vice-Chairman, a Chairman pro tempore shall be elected by the members present.

XI. Personnel

A. Conflict of Interest.

A Board member who is an abutter, who has a vested interest, or any direct interest in or toward a certain application, shall remove himself or herself from the board for all hearings pertaining to that application.

B. Removal of a Board Member

If by a majority of the entire Zoning Board of Adjustment, the permanent removal of a Board member is deemed appropriate; it shall so be recommended to the Board of Selectmen by written notification as specified in RSA 673:13.

C. Public Statements

No Board member shall discuss in public his decision, pro or con, concerning a pending application.

Any questions, statements or inquiries directed to a Board member concerning pending litigation against the Zoning Board of Adjustment or any applicant, shall be referred to the Chairman without comment.

A Zoning Board of Adjustment member shall not represent nor knowingly appear to represent said Zoning Board of Adjustment in any unofficial statements to the media, at public or private functions, or at any public hearings, unless so designated by the authority of the Board.

XII. Tapes/Minutes

All regular meetings and work sessions of the Zoning Board of Adjustment will be recorded on tape.

The tapes of the meetings will be retained for a period of three (3) years. After three (3) years, the tapes shall be destroyed, unless legal action is pending on an application contained on particular tapes.

The typed minutes of each regular meeting and work session will be retained permanently.

XIII. Bidding Process for Services Required by Zoning Board of Adjustment

The Zoning Board of Adjustment may impose reasonable fees upon an applicant for the expense of consultant services or investigative studies, review of documents and other such matters that may be required by any particular application. Any such fees shall be subject to the provisions of RSA 673:16.

When the Zoning Board of Adjustment requires Special Investigative Services, it will go out for a sealed bid at the expense of the applicant. The bidder would be required to deal only with the Zoning Board of Adjustment so that there would be no outside interference. The Zoning Board of Adjustment reserves the right to reject any or all bids.

XIV. Appeal of Administrative Decision

(RSA 676:5) Appeals to the Board of Adjustment concerning any matter within the Board's power as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken **within 30 days from the date of the decision** by filing with the officer from whom the appeal is taken and with the Board a Notice of Appeal specifying the ground thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

XV. Motions for Rehearing

A motion for rehearing shall be considered by the Board at its next regularly scheduled meeting, but no later than 30 days from the time of receipt of said motion for a rehearing. If the board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

The board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per 74 Cox Street LLC v. City of Nashua, September 21, 2007. Motions for Rehearing can only be received in the office of the board during normal business hours as per Cardinal Development v. Winchester, October 2008.

XVI. Application Acceptance

Applications shall be accepted and scheduled for Public Hearing and ZBA review by Land Use Department staff, within the required time frames, and complying with the notification requirements, contained in statute. All applications must be submitted by the owner of the land regarding the proposal or their designee, in writing. No applications shall be scheduled for hearing without the application being complete and the appropriate fee being paid.

XVII. Joint Meetings and Hearings

1. RSA 676:2 provides that the board of adjustment may hold joint meetings or hearings with other "land use boards," including the planning board, the historic district commission, the building code board of appeals, and the inspector of buildings, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
2. 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.
3. A public hearing on any appeal to the board of adjustment will be held jointly with another board only under the following conditions:
a. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
b. 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
c. 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
d. The other board shall concur in these conditions.

XVIII. Policy Amendments

The policies of the Zoning Board of Adjustment may be amended at any meeting by a majority vote of the Board.

This policy shall be effective immediately upon adoption and shall remain in effect until superseded or replaced. The seated Zoning Board of Adjustment shall review and re-enact this policy annually. This policy is due review and re-enactment one year from the date of adoption.

Date of Amendment:
May 7, 2008

Ralph Carrasco, Chair
Robert Stephens, Vice Chair
Robert Bernstein
Russ Nolin
Jerry D. Hopkins

ZONING BOARD of ADJUSTMENT

Town of Moultonborough
Zoning Board of Adjustment
Board Policy

Amended Alternate Appointment Policy

This Policy received review, revision and update. The Ordinance, as revised, received acceptance and enactment on May 21, 2008

Ralph Carrasco., Chair

Robert Stephens, Vice Chair

Robert Bernstein

Russell Nolin

Jerry D. Hopkins

ZONING BOARD of ADJUSTMENT