



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

PO Box 120, Windham, New Hampshire 03087  
(603) 432-3806 / Fax (603) 432-7362  
[www.WindhamNewHampshire.com](http://www.WindhamNewHampshire.com)

**Zoning Board of Adjustment By-Laws**

**AUTHORITY**

These By-Laws are adopted under the authority of New Hampshire Revised Statutes Annotated, 1966, Chapter 676:1, with Supplements, and the Zoning Ordinance and Land Use Regulations of the Town of Windham, NH as amended from time to time.

**OFFICERS**

The Board shall consist of five (5) elected members (chosen at Town of Windham's Election) and up to five (5) alternates appointed by the elected members of the Zoning Board.

1. A Chairperson shall be elected annually in the month of March following the Town of Windham's Election. Said Chairman shall serve for one year and shall be eligible for re-election. He/she shall preside over meetings and hearings, appoint such committees as directed by the Board, and shall affix his/her signature in the name of the Board. The Staff Secretary may sign as Secretary for the Chairman.
2. A Vice Chairperson shall be elected annually in the month of March following the Town of Windham's election. Said Vice Chairperson shall serve for one year and shall be eligible for re-election. He/she shall preside over meetings and hearings in the absence of the Chairperson and shall have the full powers of the Chairperson in matters that come before the Board during the absence of the Chairperson.
3. A Board Secretary shall be elected annually in the month of March following the Town of Windham's election. Said Board Secretary shall serve for one year and shall be eligible for re-election. The Board Secretary shall be responsible for maintaining a record of all meetings, transactions, and findings of the Board, in absence of the Staff Secretary, and shall perform such other duties as the Board may direct.

**MEETINGS**

1. Meetings of the Board shall be held in the Office of Planning and Development, conference room, or other designated location, at 7:30 PM on the 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of each month and at other times upon the call of the Chairperson. The Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board Secretary or Staff Secretary shall keep minutes of the proceedings, showing the vote, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep

the records of the examinations and other official actions, all of which shall be immediately filed in the office of Planning and Development and shall be a public record.

2. A Quorum shall consist of three members, if a member disqualified himself/herself or cannot act in a particular case he/she shall notify the Chairperson who shall designate an alternate who shall have all the powers and duties of a regular member in regard to the appeal or appeals under consideration on which the regular member is unable to act.
3. The deliberative session will be held after each case unless the Board, by vote, changes the order of business as needed. The order of business for regular meetings shall be as follows:
  - Roll call by the Chairperson.
  - Hearing of appeals and their deliberative sessions.
  - Requests for reconsideration/re-hearing (Deliberative Session).
  - Minutes.
  - Other Business.
  - Adjourn.
4. The following rules shall govern the hearing of cases before the Board.
  - The Board Secretary shall read applications in sequence of the agenda and report on the manner in which public notice and personal notice were given.
  - The Chair, with consent of the Board, may change or request a change in sequence from the Board.
  - The Chair shall recognize the applicant or his/her designated representative to present his/her appeal.
  - Those appearing in favor of the appeal shall have the opportunity to speak.
  - Those in opposition shall have the opportunity to speak.
  - Those with general comments or questions shall have the opportunity to speak.
  - The applicant shall have the opportunity to speak in rebuttal.
  - Those in favor or in opposition, or with general comments shall have the opportunity to speak in rebuttal, limited to only new information presented by the applicant during rebuttal.
  - Any persons who wish to speak for a second time may do so at the discretion of the Chair after those wishing to speak for the first time have done so.
  - The Chair may limit the length of time for testimony in a manner the Board deems appropriate.
  - All public testimony ends once the Board votes to enter deliberative session.
  - All documents submitted for the Board's consideration as exhibits shall be dated and initialed by the Chair and kept as part of the record.
  - If the Board determines additional information or time is required to reach its decision, it may vote to continue to a date certain.

### **BOARD INITIATED MEETING CHANGES**

The Chair, or Vice Chair if the Chair is unavailable, shall approve any change of location or cancellation of a meeting. If such a change is approved, the Community Development Department shall make every effort to alert the public as early as possible via a public posting and if possible the Town of Windham official website.

### **GENERAL RULES**

1. Each person who appears shall be required to state his/her name and address and indicate whether he/she is an abutter, a party to the case or an agent or counsel of a party to the case.
2. Any party who desires to ask a question of another party must do so through the Chairperson.
3. Members of the Board may ask questions at any point during testimony.
4. Any member of the Board through the Chairperson may request any party to the case to reappear.
5. Any person who desires to compel the attendance of a witness shall present his/her request in writing, to the Chairperson, no later than three (3) days prior to the meeting.
6. The following are the duties of an alternate:
  - When an alternate is assigned to a case he/she has all the duties of a regular member.
  - Non-assigned alternate members of the Board may participate in the hearing of appeals, but shall not participate in the deliberative session, which shall be limited to regular members and designated alternates.
7. Recordings of the meeting are for secretarial purposes only and recordings may be re-used after the minutes of the meeting have been approved.
8. All inquiries to the ZBA appointed Attorney shall come through the Chairman (or Vice Chairman in his/her absence) after review and approval by the Board. Understanding that procedural questions may occur in the period between meetings, the Chairman may initiate an inquiry to the Attorney to expedite proceedings. All correspondence with the Attorney shall be available to Board members.

### **APPLICATION - WITHDRAWAL**

Applicants who wish to withdraw their applications shall file a written request with the Community Development Department before the hearing notice for the scheduled hearing is released to the abutters or general public. Applications withdrawn in this fashion shall be granted by the Community Development Department.

Application withdrawal requests received after the hearing notice for the scheduled hearing is released to the abutters or general public shall be considered by the Board at the scheduled hearing.

#### **APPLICATION - REQUEST TO RESCHEDULE**

Applicants who wish to reschedule their applications for a later hearing shall file a written request with the Community Development Department before the hearing notice for the scheduled hearing is released to the abutters or general public. Requests to reschedule made in this fashion shall be granted by the Community Development Department.

A request to reschedule made by the applicant after the hearing notice for the scheduled hearing is released to the general public or abutters shall be deemed a request for a continuance and considered by the Board at the scheduled hearing. The case shall be read into the record (opened) at the scheduled hearing by the Board Secretary and public input regarding the change of date may be allowed by the Chair at this time. The Board shall first decide whether to accept the request for continuance by majority vote and then, based on that result, shall make a determination as to the final action to take on the case. A majority vote of the Board shall be required for any action taken on the case. Although continuation requests that are granted by the Board and rescheduled to a date certain do not require newspaper or abutter renotification, these cases shall be noted in the newspaper as a courtesy to the public.

#### **APPEALS**

1. Each application of an appeal shall be made on forms provided by the Board and shall be presented to the Staff Secretary of the Board who shall sign and date all applications. The Staff Secretary will advise the Chairperson of the pending appeal and schedule it for discussion at the earliest possible date.
2. The Staff Secretary and the Code Enforcement Administrator and/or the Building Inspector shall review all applications for appeals for supporting documentation. Upon successful completion of all applications and acceptance of fees the Staff Secretary shall post the time and date of the hearing.
3. Appeals to the Board may be taken by any person aggrieved, or by an officer, department head, board or bureau of the municipality affected by any decision of an administrative officer. Appeals must be made within thirty (30) days of said decision.
4. The Board shall hear all cases within thirty (30) calendar days of acceptance of the petition unless the applicant agrees to a postponement.
5. The Board may hear, affirm, and decide appeals where it has been alleged that there is an error in any order, requirement, decision or determination by an administrative official. The Board may reverse and/or modify such order, requirement, decision, or

determination, in whole or in part. The Board may also render determinations on any questions relative to the meaning of the text of the Zoning Ordinance.

6. Notification of decisions shall be on a form provided by the Board and shall be sent to the applicant, Town Clerk, Office of Planning and Development, the Selectmen's Office, the Assessor and published in a local newspaper.
7. Applications for re-hearing must be filed with the Staff Secretary or designee of the Board within thirty (30) days of the date of decision beginning the next working day the Office of Planning and Development is open to the public following the day the decision is rendered as per RSA 677:2&3 as amended by House Bill 1410 Chapter 16. The request for re-hearing will be presented to the Board for consideration at the next scheduled meeting.
8. When a request for a re-hearing has been granted the application for the new case must be submitted within thirty (30) days of the date of the decision beginning the next working day the Office of Planning & Development is open to the public following the day the decision is rendered.

#### **FORMS**

1. All forms and revisions thereto shall be adopted by resolution and shall become part of the BY-LAWS. Said forms are herewith attached (Appendix).
  - a) Subsequent amendments of forms shall require the amendment process herein.

#### **PUBLIC NOTICE**

1. Public notice of public hearings and each appeal shall be given in the newspaper of local distribution, and shall be posted at the Town Hall and the Office of Planning and Development not less than seven (7) days prior to the hearing, counting the day of posting and the day of the hearing. Such notice shall include the name of the applicant, description of the property, action desired by the applicant, description of the Zoning Ordinance concerned, the type of appeal being made and the time and place of the hearing.

#### **PERSONAL NOTICE**

1. Personal notice shall be made by certified mail to the owners of record of property abutting the property concerned. Notice shall also be given to the Office of Planning and Development, Town Clerk and the Assessor. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
2. The applicant will be responsible for obtaining a proper list of abutters from the tax records at the Town Hall.

### **SITE OBSERVATION/SITE WALKS**

- Board members are encouraged to individually observe the applicant's property and/or GIS review of the case site prior to the scheduled board meetings.
- When the Board deems it necessary for the adequate consideration of an application, a site walk shall be scheduled.
- The Board shall refrain from making decisions on an application while on a site walk.
- Site Walk meeting minutes shall be taken and the Board shall disclose what they have learned/observed while on the site walk and record as such in the hearing minutes.

### **FEES**

1. There shall be a fee of \$75.00 for an Area Variance, \$200.00 for a Use Variance, all other applications are \$60.00 plus \$6.00 per abutter, including applicant and any designated representative, paid to the Staff Secretary of the Board or the designee when filing the appeal.
2. Requests for refund of application fees by applicants shall be addressed to the Chairman and reviewed by the Board. Consideration of requests shall be presented after 60 days of the scheduled (or actual) hearing. If approved by the Board, the Chair will forward a letter of request to the Board of Selectmen and copy the requestor.

### **AMENDMENTS TO THE BY-LAWS**

1. The By-Laws may be amended by a majority vote by the Board provided such an amendment is posted and a public hearing held.
  - a. The process to amend the By-Laws is as follows:
    - i. The Board considers the request for an amendment during a public meeting, with the opportunity for the Board to draft edits, concluding the request process with an agreement by majority to a draft amendment.
    - ii. The draft amendment is posted and scheduled for review during a public hearing. This review may occur as part of a regular or special meeting.
    - iii. Once the public hearing occurs, the Board may adopt the amendment by majority vote.
2. Upon adoption, the ZBA Administrative Assistant shall file a copy of the newly amended By-Laws, signed by the Chair, with the Town Clerk.
3. The Board may temporarily waive or modify the provisions of these rules when, in the opinion of the Board, such action is deemed reasonably necessary to effectuate the lawful purposes of the Board's business. The justification for such action shall be

stated and noted in the minutes. A majority vote by the Board is required on the proposed waiver.

4. These rules of procedures, and any subsequent amendments, shall become effective immediately upon passage by the Board as recorded in the minutes of the meeting at which such action occurs.
5. If any portion of these rules shall be held to be invalid for any reason by any court of competent jurisdiction, such holding shall not invalidate in any manner any other provision contained herein.

---

*Date*

---

*Chairman  
Zoning Board of Adjustment*