

Board of Adjustment Town of Waterville Valley
Rules of Procedure

I. AUTHORITY

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, [Chapter 676:1](#), and the zoning ordinance of the Town of Waterville Valley.

II. OFFICERS

1. **A chairman** shall be elected annually by a majority vote of the board in the month of May. 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.
2. **A vice-chairman** shall be elected annually by a majority vote of the board in the month of May. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters which come before the board during the absence of the chairman.
3. **A clerk** shall be elected annually by a majority vote of the board in the month of May. The clerk shall maintain a record of all meetings, transactions and decisions of the board, and perform such other duties as the board may direct by resolution.
4. All officers shall be elected from regular members, serve for one year and shall be eligible for re-election.

III. MEMBERS AND ALTERNATES

1. Five regular and up to three alternate members shall be appointed, as provided for by Article VIII, Town of Waterville Valley Zoning Ordinance. Alternate members should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.
2. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other board members, the applicant, abutters and the public. Alternates not serving as full members shall not be allowed to make or second motions and shall not participate in any way during the deliberations by the board. Upon the close of the public hearing, any alternate not acting in place of another member shall remove themselves from the table and sit with other members of the public. During work sessions or portions of meetings that do not include

a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

3. Alternate members will be given primary consideration when the board makes recommendations to the Selectmen for appointment of regular members.
4. Members must reside in the town 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, including the chairman and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration unless the member disqualifies him or herself pursuant to New Hampshire law and Section IV(3) of these regulations.

IV. MEETINGS

1. **Regular meetings.** Properly noticed regular meetings shall be held at Town Office, during the months of May, August, November and February unless waived by the chairperson. Other meetings may be held on the call of the chairman provided public notice and notice to each member is given in accordance with [RSA 91-A:2, II](#), and other notice is properly provided under RSA 676:7 when appropriate.
2. **Quorum.** A quorum for all meetings of the board shall be three members, including alternates sitting in place of members.
 - a. The chairman shall make every effort to ensure that all five members, and one or more alternates, are present for the consideration of any appeal or application. No member or alternate may participate in an appeal or application without being physically present.
 - b. If any regular board member is absent from any meeting or hearing, or disqualifies himself 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.
 - c. If there are less than five members (including alternates) present, the chair shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present, the lack of a full board shall not constitute grounds for a rehearing should the application fail.
3. **Disqualification.** If any member finds it necessary to disqualify himself from sitting in a particular case as provided in [RSA 673:14](#), he shall notify the chairman as soon as possible so that an alternate may be appointed to sit in his 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 whenever possible. The vote shall be advisory and non-binding.
 - a. Either the chairman or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification

prior to the beginning of the public hearing and otherwise as soon as such disqualification is known. The disqualified member shall absent himself/herself from the board table during the public hearing and during all deliberation on the case.

4. **Order of Business.** The order of business for regular meetings shall be as follows:
 - a. Call to order by the chairman.
 - b. Roll call by the clerk.
 - c. Minutes of previous meeting.
 - d. Unfinished business.
 - e. Public hearing and deliberation.
 - f. New business.
 - g. Communications and miscellaneous.
 - h. Other business.
 - i. Adjournment.

V. APPLICATION/DECISION

1. Applications

- a. Each application to the board shall be made on forms provided by the board and shall be presented to the staff at the Town Office who shall record the date of receipt. Following receipt of an application, the application shall be forwarded to the chair (or designee).

Appeals from a decision taken under [RSA 676:5](#) shall be filed by the applicant within 30 days of the decision unless the board, in the interest of equity, elects to extend the appeal period for up to an additional 30 days, when in its sole discretion the Board determines that the decision was not, nor reasonably could have been, known by the petitioner within the appeal period.

The clerk shall present to all board members all applications received by him or her at least 7 days before the date of the public hearing.

- b. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure upon such adoption.
- c. The public hearing shall be held within 45 days of receipt of the application.
- d. The board may establish a filing fee of Two Hundred Dollars (\$200.00) for each application to cover the board's administrative costs, with such fee to be listed in the application forms. This fee is nonrefundable and shall be in addition to the notice costs to be paid by the applicant under [RSA 676:7](#). No additional filing fees will be required if the Board requests additional or corrected information from an applicant.

2. Public Notice

- a. Public notice of public hearings on each application shall be given in a newspaper of general circulation in the area (such as, but not limited to, the *Plymouth Record Enterprise*) and shall be posted at Waterville Valley Post Office and Town Office not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, address of property, 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.
 - b. Personal notice shall be made by certified mail to the applicant and all abutters and holders of conservation preservation, or agricultural preservation restrictions not less than five (5) days before the date of the hearing. Notice shall also be given to the planning board, town clerk and other municipal boards 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.
 - c. The applicant shall pay for all required notice costs in advance.
3. **Public Hearing.** The conduct of public hearings shall be governed by the following rules:
- a. The chairman shall call the hearing in session and ask for the clerk's report on the first case.
 - b. The clerk shall read the application and report on how public notice and personal notice were given.
 - c. Members of the board may ask questions at any point during testimony.
 - d. Each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
 - e. Any member of the board, through the chairman, may request any party to the case to speak a second time.
 - f. Any party to the case who wants to ask a question of another party to the case must do so through the chairman.
 - g. The applicant shall be called to present his application.
 - h. Those appearing in favor of the application shall be allowed to speak.
 - i. Those in opposition to the application shall be allowed to speak.
 - j. The applicant and those in favor shall be allowed to speak in rebuttal.
 - k. Those in opposition to the application shall be allowed to speak in rebuttal.
 - l. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chairman no later than 3 days prior to the public hearing.
 - m. The board of adjustment will 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 and applicable state and federal law.
 - n. 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.
 - o. The hearing on the appeal shall be declared closed and the next case called up.

4. **Deliberations.** After a public hearing is closed, the board shall deliberate, in public, and in a manner such that all discussion can be heard by the public, on the essential facts that the testimony has established.
5. **Statement of Reasons.** As the source of documentation for the community's position in a given case, the board shall state the reasons for its decision to allow for proper review if that should be necessary.
6. **Decisions.** The board shall decide all cases within a reasonable period of time from the close of the public hearing and shall approve, approve with conditions, or deny the application. Notice of the decision will be made available for public inspection within 5 business days, as required by [RSA 676:3](#), and will be sent to the applicant by certified mail. If the application is denied, the notice shall include the reasons therefore. The notice shall also be given to the planning board, the board of selectmen, town clerk, property tax assessor and other town officials as determined by the board.
7. **Voting.** The chairman may assign the task of drafting a motion to a board member who shall bring a draft motion to the board at the continuation of the deliberative portion of the meeting for the consideration of the board. Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The board must put forth a new motion to affirmatively set forth a decision.
8. **Withdrawal of an Application.** An applicant may withdraw an application at any time prior to the close of the public hearing. Withdrawal shall be by written notice to the board or by a declaration by the applicant at the public hearing. The applicant's filing fee and notice fees shall not be refunded in the event of a withdrawn application.
9. **Reconsideration by the Board.** The board may reconsider on its own volition a decision to grant or deny an application or to 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 Town Office during normal business hours and must be filed within 30 days of the date the board made the decision.

VI. RECORDS

1. The records of the board shall be kept at the Waterville Valley Town Office and made available for public inspection in accordance with [RSA 673:17](#) and RSA 91-A.
2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made. [RSA 676:3](#).
3. 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 5 business days of the public meeting. [RSA 91-A:2 II.](#)

VII. AMENDMENTS

1. The Board's rules of procedure, including any forms that are incorporated by reference, may be amended by a majority vote of its members. The board shall hold a public hearing prior to adoption of new rules or amendment of existing rules. Notice for the time and place of the hearing shall be as provided in RSA 675:7. The amended procedures shall be filed with the Town Clerk.

VIII. WAIVERS

1. 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.

IX. 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 chairmen of the two boards.
3. A public hearing on any application 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 applications 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.