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**TOWN OF SALEM, NEW HAMPSHIRE  
ZONING BOARD OF ADJUSTMENT**

**BY LAWS AND RULES OF PROCEDURE**

The Salem, 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’s 674:33, RSA 674:33-a which grants the ZBA power to decide equitable waivers and RSA 674:41 which grants the ZBA power over appeals to build on lots without “street access” and 676:5-7. The procedures are not discretionary; they are limiting and mandatory. The Board does not change, alter or amend the Salem, New Hampshire Land Use Controls, the “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.

**Article I. AUTHORITY**

These By Laws and Rules of Procedures are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1 as amended, and the Ordinance and map of the town of Salem, New Hampshire.

**Article II. APPOINTMENT AND TERMS OF MEMBERS**

**REGULAR MEMBERS**

**In accordance with RSA 673:3, the Board shall consist of five (5) Regular Members who are appointed by the Board of Selectmen for a term of three (3) years.**

**All terms shall begin in May 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.**

**All regular members shall continue to serve until reappointment or a successor has been appointed. However, no member shall serve as a hold over 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.**

**The May commencement term and the holdover provisions must be consistent with the requirements set forth by either Town Meeting or the Board of Selectmen.**

**Regular members must be residents of Salem, 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 Board's Agent as soon as possible. Members will participate in the decision-making process and vote to approve or deny all motions under consideration (unless disqualified).**

**Any Regular Member who is absent for three (3) consecutive meetings, unless there are extenuating circumstances or has prior approval, shall be recommended by the Board of Adjustment to the Board of Selectmen for removal from the Board.**

## **ALTERNATES**

**Alternate membership shall consist of five (5) members.**

**In accordance with 673:6, the Board of Selectmen shall appoint up to five (5) Alternate members, for a term of three (3) years.**

**All terms shall begin in May 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.**

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

**The May commencement term and the holdover provisions must be consistent with the requirements set forth by either Town Meeting or the Board of Selectmen.**

**Alternates must be residents of Salem, New Hampshire and are expected to 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.**

**Each April, the board's agent will prepare a rotating roster that schedules a minimum of 2 alternate members to attend each meeting for the upcoming year for each upcoming meeting. One alternate will be designated as primary, and the other as secondary, for sitting in place of a member. When notified a member or scheduled alternate member will be absent from a meeting, the board's agent will schedule additional alternate members to attend the meeting. The Board's agent shall include the names of the alternate members scheduled to attend the meeting in the monthly meeting package.**

**Alternates who are requested to attend the meeting must sit with the Board's Agent.**

**Alternates may not participate in any discussions unless they are requested to sit in place of a Member.**

**Other Alternates may attend the meeting as members of the audience.**

**Any Alternate Member, who is absent for three (3) consecutive meetings that he/she is scheduled at, unless there are extenuating circumstances or he/she has prior approval, shall be recommended by the Board of Adjustment to the Board of Selectmen for removal from the Board.**

### **Article III. OFFICERS AND AGENT**

#### **OFFICERS**

**CHAIRPERSON:** In accordance with RSA 673:9 a Chairperson shall be elected by a majority vote of the Board, in the month of May, or not more than 30 days after if deemed necessary. The Chairperson shall serve for one (1) year and shall be eligible for re-election. The Chairperson shall preside over all meetings, hearings and non-public session, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

**VICE-CHAIRPERSON:** In accordance with RSA 673:9 a Vice-Chairperson shall be elected by a majority vote of the Board, in the month of May, or not more than 30 days after if deemed necessary. The Vice-Chairperson shall serve for one (1) year and be eligible for re-election. The Vice-Chairperson shall preside in the absence or at the request of, the Chairperson and shall have full powers of the Chairperson on matters, which come before the Board during the absence, or at the request of, the Chairperson.

**SECRETARY:** In accordance with RSA 673:9 a Secretary shall be elected by a majority vote of the Board, in the month of May, or not more than 30 days after if deemed necessary. The Secretary shall serve for one (1) year and be eligible for re-election. The Secretary shall record the list of those Members or Alternates present at the meeting that are eligible to vote. The Secretary shall maintain the applicant's files during the Boards meeting. The Secretary shall distribute the Findings of Fact, read the list of abutters and record the motions and votes for each petition coming before the Board.

#### **AGENT:**

**The Board of Selectmen shall designate a Town of Salem employee(s) as agent(s) for the Board.**

**The Agent(s) shall be responsible for providing applicants with a copy the Board's "By Laws and Rules for the Transaction of Business" and the correct Application Form. In addition, the Agent(s) shall provide each board member with a "Members Information Packet" at least 6 working days prior to each meeting. Each Member's Information Packet should include a copy of the upcoming meeting's Agenda including the names of the alternates scheduled to attend the meeting, a copy of the Application Form for each appeal on the Agenda and any other information that the Board may request or the Agent(s) may deem to be necessary.**

## **SCHEDULE OF MEETINGS AND HEARINGS**

### **Public Hearings:**

**Pursuant to RSA 676:7 a Public Hearing shall be held within thirty (30) days of the date that an Application is received by the Agent for the Board.**

**Public Hearings on Appeals to the Board will normally be held on the first Tuesday of each month at 7:00pm in the Knightly Meeting Room at the Salem Municipal Office Building, 33 Geremonty Drive, or at such time, date and place as the Board specifies.**

### **Administrative Meetings:**

**Administrative meetings may be called by the Chairperson to consider such matters as may be deemed appropriate.**

## **Article IV. NOTICE OF PUBLIC HEARINGS AND MEETINGS:**

**All meetings of the Board shall be held in accordance with Chapter 91-A:2 and 91-A:3 of the Revised Statutes Annotated, as it exists or may be amended, relating to meetings open to the public and nonpublic sessions and any amendments.**

### **(a) Public Hearings:**

**Pursuant to RSA 676:7, the Applicant and every abutter and holder of conservation, preservation, or agricultural preservation restrictions shall be notified of the Public Hearing by certified mail stating the time and place of the Public Hearing, and such notice shall be given by certified mail not less than five (5) days before the date of the Public Hearing.**

**Pursuant to RSA 676:7, a Notice of Public Hearing shall be placed in a newspaper of general circulation in the area not less than five (5) days before the date of the Public Hearing. This notice must actually appear in the newspaper not later than the seventh day before the meeting since the day of publication and the day of the Public Hearing cannot be counted in determining the five (5) day notice period.**

**In addition a Notice of Public Hearing shall be posted at the Salem Municipal office building and at the Kelly Library not less than five (5) days prior to said Public Hearing.**

**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.**

**Said “Notice of Public Hearing” shall be in the form as found in Appendix B Meeting Notice, as may be amended from time to time, and shall include the name of the Applicant, the Map and Lot number of the property, the provision of the Ordinance concerned, the type of appeal being made and the time and place of the Public Hearing.**

**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.**

**(b) Administrative Meetings:**

**Pursuant to RSA 673:10, Notice of an Administrative Meeting, stating the Agenda, date and time shall be sent to Board members and posted in the Municipal Office Building and at the Kelly Library not less than 24 hours prior to the meeting.**

**Article V. QUORUM AND VOTING:**

**A quorum for all meetings of the Board shall be three (3) members, which may include Alternate(s) sitting in place of Member(s).**

**Action on any appeal to the Board shall be taken on the basis of a motion, duly seconded, made by any member of the Board other than the Chairperson.**

**The vote of each member shall be taken by a roll call vote called by the Chairperson.**

**The concurrent vote of three (3) sitting Members or Alternates shall be necessary to decide in favor of any matter before the Board. Any appeal receiving fewer than three (3) affirmative votes shall by result be denied as failing to meet all criteria necessary for the appeal.**

**If a quorum of three (3) Members is not present, no cases will be heard.**

**If only three (3) Members are present, the Applicant may request postponement to a time when a full Board of five (5) Members is present. No new application fees will be charged.**

**If only four (4) Members are present, the Applicant may request postponement to a time when a full Board of five (5) Members is present if he/she resubmits a new application and the appropriate fees.**

## **DISQUALIFICATION OF MEMBERS:**

**In accordance with RSA 673:14, a Member must step down from an appeal if he/she:**

**Has a direct personal interest or pecuniary interest in the outcome, which differs from the interest of other citizens in the community.**

**Would be disqualified to sit as a juror on said case in court.**

**Other examples of disqualification are**

**Is an abutter.**

**Has publicly taken a position on the application other than in the course of ruling on another similar application.**

**Has assisted the Applicant or abutter.**

**Is employed by or employs the Applicant.**

**Is prejudiced to any degree regarding the appeal.**

**If uncertainty arises as to whether a Member should be disqualified, according to RSA 673:14, II, the ZBA by rule may allow non-board Members as well as Board Members to request a disqualification vote. Any such request shall be made prior to or at the commencement of any required public hearing. Such vote is advisory and Non-binding.**

**The individual Board Member should consider the following steps when evaluating whether a Member should be disqualified.**

**Does the Member have a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens or would the Member be disqualified to sit as a juror on the case in court?**

**If the answer is positive, the Member, before consideration on the Appeal commences, should:**

- a. Inform the Chairperson that the member has a conflict.**
- b. Generally state what the conflict might be i.e. financial, legal etc.**

**The Chairperson shall announce the disqualification and appoint an Alternate to fill the seat, per schedule.**

**The disqualified Member shall absent him/herself from the Board table during the public hearing and all deliberation on the appeal. The Board cannot remove the Member over that Member's refusal to recluse him or herself.**

**The minutes of the Board should reflect the following:**

- a. That the Member was disqualified and the reasons why.**
- b. The Member did not participate in any discussions of the appeal.**
- c. The Member was absent from the vote.**
- d. When the Member returned to the Board.**

## **Article VI. CONDUCT OF BOARD MEMBERS**

**Every Member or Alternate sitting on an appeal, which is present when a vote is taken, shall participate in the vote. If a Member abstains, his or her vote is not counted.**

**No Member or Alternate of the Board shall represent the Board before any other Town of Salem Board or Committee without authorization by the Board.**

**In accordance with Section 309- 122 of the Salem Land Use Controls ordinance, Board members may only turn down an appeal after making a physical inspection of the site in question. Not more than two Board Members may conduct their inspection of each site at the same time.**

**The Board should not allow testimony by the Applicant, Public or any Board member, which would degrade the character of the Applicant or Abutters or Non-abutters. Testimony by the Applicant, Public or Board members concerning previous or current violations should be discouraged unless the Building Department has fully investigated the allegations and has issued a notice of violation, and that the violation has a direct effect on, or is relevant to, the appeal process.**

## **Article VII. APPLICATIONS TO THE ZONING BOARD OF ADJUSTMENT**

**The Board will not accept an application when the property is involved in litigation and the outcome of such litigation may materially affect the decision of the Board**

**If an application has been scheduled for a hearing but has missing, incorrect, or inaccurate information such as a certified plot plan or septic design plans, that information must be received by the Building Department at least eight (8) business days prior to the hearing. If the information is not provided within the required time frame, the ZBA at its discretion may continue the hearing until the following month.**

## **Article VIII. RESPONSIBILITIES OF THE APPLICANT/AGENT**

**The Applicant/Agent is advised that the Board is a quasi-judicial body. The presentation and all testimony given to the Board must be truthful and given in good faith.**

**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 their agent misrepresented a material fact which lead the Board to grant their appeal.**

## **Article IX. RULES OF PROCEDURE FOR PUBLIC HEARINGS AND MEETINGS**

### **GENERAL RULES FOR PUBLIC HEARINGS**

**The Chairperson, with the approval of the majority of the Board may administer oaths to those wishing to give testimony to the Board.**

**In accordance with RSA 672:7, the Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the appeal , or such other persons as it deems appropriate.**

**Pursuant to RSA 91-A, it is within the jurisdiction of the Board to set limits on the time that each speaker is allotted.**

**Members of the Board may ask questions at anytime and may request additional testimony from any person that has spoken in favor or opposition to the appeal.**

**The Chairperson shall have the right to order the removal of any person who refuses to obey the orders of the Chair.**

**If speakers wish to point out features on a plan or on other pieces of evidence, it should be done on plans posted in the room for all to see, and should not be done with the speaker standing next to the Board's table.**

**Once the Public Hearing is closed and the deliberative session is opened, NO further public input from the applicant or other parties shall be permitted.**

**In addition to the written minutes of the hearing the audio and videotape are important parts of the record. Therefore, all parties addressing the Board must do so from the podium.**

**The Chairperson shall poll all Members and Alternates present to determine those that are eligible to vote pursuant to Section 309-122 of the Salem Land Ordinance and the Board's By-laws and Rules of Procedure.**

## **ORDER OF BUSINESS AT PUBLIC HEARING**

**The Chairperson shall call the meeting to order.**

**The Chairperson shall introduce the members of the Board and the staff that are present at the hearing.**

**The Chairperson shall then address the scope and authority under which the Board operates and then describe how the meeting will be run.**

**The Chairperson advises those present of appeals that have been withdrawn.**

**The Board shall then hold the public hearings on appeals before it.**

### **Rehearing Requests**

**Acceptance of previous meetings minutes.**

**Other business**

**Communications**

**Adjournment**

## **CONDUCT OF PUBLIC HEARINGS ON APPEALS**

**The Chairperson shall read the details of the appeal**

**The Chairperson shall read the list of Members or Alternates that will hear the appeal.**

**The Secretary shall read the list of abutters.**

**The Chairperson shall open the public portion of the appeal.**

**The Applicant and or their Representative will then approach the podium and state their name and address.**

**The Applicant and/or their Representative will then present their appeal.**

**The Applicant must have submitted all documentation with the Application in accordance with Article 7. In presenting their appeal, the Applicant and/or their Representative should only address the criteria that the Board will use in deciding the appeal. The presentation should be complete and concise. The Applicant may submit whatever additional brief plans (one or two documents) and/or photographs deemed necessary to properly present their appeal.**

**If at the hearing the applicant submits for the first time long, detailed documentation, the ZBA may continue the hearing until the following month.**

**Once the presentation is completed and all Board Members questions have been answered, the Chairperson will then recognize those people in the audience that are authorized to speak in favor of the appeal.**

**Those speaking in favor of the appeal should approach the podium and state their name and address. Their testimony should be limited to only information augmenting the Applicant's request. Repetitive testimony is discouraged and comments should be as brief and concise as possible while still fully stating the desired position.**

**The Chairperson shall then recognize those wishing to speak in opposition to the appeal.**

**Those authorized to speak in opposition to the appeal should approach the podium and state their name and address. Their testimony should be limited to the facts upon which they feel the criteria for the appeal are unsatisfied. These individuals may submit whatever brief plans (one or two documents) and/or photographs deemed necessary to properly present their opposition. The presentation should be complete and concise and non-repetitive in nature. If long, detailed documentation is submitted at the time of the hearing, the ZBA may continue the hearing until the following month to review the documentation.**

**The Applicant and/or their Representative shall then be allowed to speak in rebuttal to any new issues raised by anyone who spoke in favor or in opposition to the appeal.**

**Then the Chairperson shall recognize those in opposition for rebuttal.**

**The Chief Building Official may then be asked to provide any additional facts relevant to the appeal which have not been submitted but which the Board should be aware of.**

**Once all the parties have been allowed to speak and there are no additional questions from the Board, the Chairperson shall close the public hearing.**

**The Chairperson shall then open the deliberative portion of the appeal.**

**Once the deliberative portion of the hearing is open the Chairperson shall review the relevant facts of the appeal and request a motion from the Board.**

**The meeting will end at 11 p.m. unless the ZBA votes to continue hearing the pending applications and/or remaining appeals.**

## **Article X. TYPES OF APPEALS**

**In accordance with RSA 674:33, 674:33-a, 674:41 and 676:5 the Board has the authority to act in the following categories: Variances, Special Exceptions, Administrative Appeals and Equitable Waivers of Dimensional Requirements.**

**No appeal can be acted upon without a Public Hearing. The Board strongly recommends that before making any appeal that the applicant is familiar with the Salem Land Use Ordinance and with the New Hampshire Statutes Chapter 672-677.**

### **BURDEN OF PROOF**

**In order for an appeal to be granted, it is the responsibility of the Applicant to satisfy each of the requirements set forth.**

### **VARIANCE**

**There are two types of variances , a use variance which permits the use of the land that is not allowed by the Ordinance and an area variance which involves matters such as setbacks, lot area, frontage, etc. New Hampshire Zoning Law recognizes no distinction between “use” and “area” variances. Both must be evaluated from the same legal viewpoint. Variances stay with the property and can be used by the present and subsequent owners. Relief granted by the Board cannot be limited to a particular individual nor can it be limited to a specific period of time.**

**To obtain a variance, an Applicant must make a persuasive showing to each item in a five-part tests that:**

- 1. No diminution in values of surrounding properties would result.**
- 2. Granting the variance would not be contrary to the public interest.**
- 3. Denial of the variance would result in unnecessary hardship**
  - A. The zoning ordinance as applied to the property interferes with the Applicant’s reasonable use of the property, considering the unique setting of the property in its environment.**
  - b. No fair and substantial relationship exist between the general purpose of the zoning ordinance and the specific restriction on the property for which the variance is being requested.**
  - c. The variance request would not injure the public or private rights of others.**

- 4. Granting the variance would do substantial justice.**
- 5. Deviation from the strict requirements of the Ordinance would still be in the spirit of the Ordinance.**

**In accordance with RSA 674:33, paragraph V, the Zoning Board of Adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:**

- a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.*
- b) in granting any variance pursuant to this paragraph, this zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.*

### **SPECIAL EXCEPTION**

**Simply stated, a Special Exception is the use of land or buildings that is permitted subject to specific conditions that are set forth in the Salem Land Use Ordinance. Special exceptions were developed as a way of providing for types of uses, which are necessary and desirable, but which are potentially incompatible with uses usually allowed in a particular district. These uses are not permissible as a matter of right because in some situations they might pose serious problems.**

**There are major distinctions between Special Exceptions and Variances. A variance is authority to use a property in a manner prohibited by the Ordinance. A Special Exception is the use of a property, which the Ordinance expressly permits.**

**The Zoning Ordinance provides a number of Special Exceptions. The Applicant should refer to the Zoning Ordinance for the conditions of the Special Exception requested.**

**To obtain a Special Exception, an Applicant must make a persuasive showing as to each item set forth in the Zoning Ordinance.**

**In hearing an appeal for a Special Exception the Board does not have the power to waive any of these conditions. The Board's only function is to determine if the conditions are met. If the conditions are met the Board MUST grant the Special Exception. However, the Board does have the right to place reasonable conditions on the granting of the Special Exception.**

**For the following Special Exceptions, refer to the Salem Land Use Manual as noted:**

**SPECIAL EXCEPTION in a Commercial District, see Section 309-48**

**SPECIAL EXCEPTION in a Residential District, see Section 309-8**

**SPECIAL EXCEPTION in a Rural District, see Section 309-31**

**SPECIAL EXCEPTION in a Recreational District, see Section 309-53**

**SPECIAL EXCEPTION in a Limited Comm. Shopping Village Dist, see Section 309-58.3**

**SPECIAL EXCEPTION in a Manufactured Housing Park District, see Section 309-63**

**SPECIAL EXCEPTION in a Garden Apartment R-A District, see Section 309-13**

### **ADMINISTRATIVE APPEALS**

**Under RSA 674:33, the Board has the power to hear and decide appeals from a written administrative decision involving the interpretation of the terms of the Ordinance.**

**Per Section 309-111 of the Zoning Ordinance, The Appeal must be filed with the Board within ten (10) days of said decision. All applications for an “Appeal of a Administrative Decision” must include a copy of the written decision being appealed.**

**In exercising its powers the Board may affirm or reverse, 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.**

**In hearing an administrative appeal the questions the Board should ask are:**

- 1. Has the administrator incorrectly interpreted a district boundary?**
- 2. Has the administrator incorrectly interpreted the exact meaning of an article or Term?**

**In determining the intent and meaning of a provision, the Board is restricted to a fairly literal interpretation. It cannot alter the Ordinance or waive any restrictions under the guise of interpreting the law. The proper inquiry is the ascertainment of the intent of the enacting body. Where the Ordinance defines a term in issue the definition will govern.**

**Once the administrator has commenced legal enforcement proceedings, the decision is not appealable to the Board.**

## EQUITABLE WAIVERS

**Under RSA 674:33-a, the Board has the authority to grant “Equitable Waivers” for a pre-existing violation of a dimensional requirement imposed by the Ordinance.**

**To obtain a Equitable Waiver, an Applicant must make a persuasive showing that each of the following exists:**

- 1. INNOCENT MISTAKE:** The violation occurred by virtue of a good faith error in calculations or measurements, on the part of either the owner, owner’s agent or a municipal officer, or was due to a municipal official’s mistake in construing the local ordinance when the official was in the process of issuing a permit over which the official had authority. (NOTE: Ignorance of the law or Ordinance does not count as a “mistake” nor does “failure to inquire, obfuscation, misrepresentation or bad faith”).
- 2. NOT DISCOVERED UNTIL TOO LATE:** The mistake was discovered after a structure in violation was already substantially built, or a lot in violation had already been sold.

**The violation existed for over ten years without any attempts by the Town to take enforcement action.**

- 3. NO NUISANCE:** The violation does not constitute a public or private nuisance, (or) diminish the value of other property, (or) adversely affect any present or permissible future uses of the property in question.
- 4. HIGH CORRECTION COST:** The Owner or Applicant must prove that the cost of correction so far outweighs any public benefit that it would be unfair to require the violation to be corrected.

***As an alternative to #1 & #2, the Owner or the Applicant, can demonstrate to the satisfaction of the Zoning Board of Adjustment that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violations has been commenced against the property during that time by either the town or any person directly affected. Even under this alternative, the Owner, or Applicant, must still prove the “No Nuisance” and “High Correction Cost” factors in #3 and #4.***

## **Article XI. DECISIONS OF THE BOARD**

### **ATTACHING CONDITIONS:**

**The Board has the authority to attach reasonable conditions in the granting of any appeal.**

**Reasonable conditions may be attached for reasons including, but not limited to, where they are necessary to preserve the spirit of the zoning ordinance. The placing of conditions may be designed 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. However the condition or conditions must be related to the use of the land and not to the personal circumstances of the applicant. 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.**

**Pursuant to RSA 676:15 and 676:17 the Board may seek Injunctive Relief, a Fine, or both for the violation of a condition.**

### **ISSUANCE OF DECISION:**

**Pursuant to RSA 676:3, the Board shall issue a final written decision which either approves or disapproves an application for a local permit. If the application is not approved, the Board shall provide the applicant with written reasons for the disapproval.**

**Whenever the board issues a decision, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons, shall be placed on file in the Board's office and shall be made available for public inspection within 144 hours of such vote.**

**The Board shall issue its decision on the forms contained in Appendix A, as may be amended from time to time.**

**All voting members must record his/her reason(s) for decisions on the appropriate "Findings of Fact Sheets". Said "Finding of Facts Sheets" shall be collected by the Secretary after every vote and placed in the Applicant's file. All "Finding of Facts Sheets" shall be available for public inspection.**

**TABLED APPEALS:**

**On the motion of any member, approved by at least three (3) affirmative votes, an appeal requiring additional information may be tabled to the next regularly scheduled meeting.**

**An Applicant may request an extension of time but not beyond three regularly scheduled meetings from the public hearing. Said request must be made in writing at the time of the public hearing.**

**In the event that an appeal is tabled prior to deliberation, it shall be re-noticed for further public hearing and the Applicant may be required, at the Board's discretion, to pay a full second application fee.**

**Article XII. REHEARING/APPEAL OF THE BOARD'S DECISION**

**Pursuant to RSA 677:2, within thirty (30) calendar days after any order or decision of the Zoning Board, the Selectmen, the Applicant, any abutter, or any party directly affected by the decision may apply for a rehearing in respect to any matter determined in the action or proceeding or covered or included in the Board's decision.**

**The thirty-day (30-day) limit is in the nature of a statute of limitations; therefore, it is mandatory and shall be strictly enforced. The Board cannot waive the time period for a motion for a rehearing even if it desires to do so. This 30-day time period shall be counted in calendar days beginning with the date upon which the Board voted to approve or disapprove the application; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 144 hours of the vote, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefore, within 30 days after the date on which the written decision was actually filed.**

**The New Hampshire Supreme Court has made it clear that rehearing applications shall be limited. The Board decides cases only after careful consideration of all evidence on hand and on the best possible judgment of each of its members. The reason(s) for a rehearing should be compelling ones. The Board has no right to reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created.**

**The rehearing process allows the Board to reconsider its actions before appeals are filed with the court. All applications for a rehearing shall be made on the "Rehearing Application" as shown in Appendix A, as may be amended from time to time.**

**The applicant for a rehearing must:**

**In accordance with RSA 677:3, the applicant must fully set forth every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.**

**The burden of proof shall be on the applicant for the rehearing.**

**Pursuant to RSA 677:3, the Board shall, within thirty (30) days, either grant or deny the rehearing or suspend its previous decision pending further consideration.**

**The Board is not required by law to hold a public hearing on the rehearing application.**

**The decision of the Board must be entered on the records of the Board, and should be communicated to the applicant in writing.**

**If the Board takes no action on the rehearing request within thirty (30) days, and does not request an extension of time from the applicant, the applicant shall assume that the request has been denied and therefore, is free to proceed to Superior Court with his/her appeal.**

**If the Board grants the appeal for a rehearing, an entirely new rehearing must be advertised and appropriate notice given to abutters.**

**At the time of the new hearing all evidence is to be considered and the hearing conducted in the same manner as the original hearing.**

**The applicant should be aware that if the Board grants a rehearing, the Board is not limited to hear or consider only those issues that the applicant chooses to present and may in fact, adopt a different interpretation of the law and base its denial, at the rehearing, on reasons other than those used at the first hearing. The rehearing shall occur at the next regularly scheduled public meeting unless good cause is shown to warrant hearing at a later date.**

### **Article XIII. SUBSEQUENT APPLICATIONS**

**The Supreme Court of New Hampshire has made it clear that subsequent applications by unsuccessful applicants will be limited.**

**If a property has had a previous appeal denied by the Board, any new appeal for the same or a similar use or condition must be reviewed by the Board to warrant acceptance for public hearing.**

**An applicant seeking an appeal for a use or condition, which was denied at an earlier time, can only be legally entitled to consideration if:**

- 1. A material change of circumstances affecting the merits of the application has occurred.**

**or**

- 2. The application is for a use or condition that materially differs in nature and degree from the use applied for in the prior proceedings.**

**or**

- 3. On January 29, 2001, the New Hampshire Supreme Court redefined the “Unnecessary Hardship” requirement for a variance. If an applicant was denied a variance primarily because the applicant failed to meet the old hardship standard, then the applicant can file a new variance request because the changing law is a material change of circumstances affecting the merits of the application.**

**To determine the reasons for the previous denial, the ZBA shall review its findings, and if necessary, the minutes of the previous application. If the voting records of the previous hearing indicates the application was denied primarily for failure to meet the old hardship standard, then the ZBA will vote to hear the application and move it to the following months meeting agenda.**

**However, if the voting records of the previous hearing indicate that the application was denied primarily for other variance requirements, then the new application will not be heard.**

**The burden of proving a material change of circumstances as well as other issues lies with the applicant.**

#### **Article XIV. EXPIRATION OF APPROVALS**

**An approval for a variance, special exception, or appeal from administrative decision shall expire at the end of one (1) year if the approval is not exercised through the institution of the use or through obtaining a building permit. In the event that there are other regulatory approvals required and the applicant is actively pursuing these approvals, the one (1) year time period shall not begin until the completion on those regulatory approvals.**

**Any applicant / agent whose request also requires the approval of the Planning Board has one (1) year to secure said approval.**

**It is suggested that construction not commence until thirty (30) days after the decision, should the case come under appeal by an abutter or other evidence arises.**

## **Article XV. MINUTES OF HEARING, MEETING & NOTICES OF DECISION**

**Pursuant to RSA 91-A:2, II and RSA 676:3, II, the minutes of all public hearings including the written decision containing the reasons shall be made available for public inspection within one hundred forty-four (144) hours of the meeting.**

## **Article XVI. FORMS**

**All forms and revisions thereto shall be adopted by resolution and shall become part of the By Laws and Rules of Procedure. Said forms are herewith attached in Appendix "A". Subsequent amendments or revisions to forms shall comply with the amendment process in Article XVIII.**

## **Article XVII. CODE OF ETHICS**

**Board members should not discuss the details of a pending appeal with the Applicant, Applicant representatives, Abutters, the public, public officials, or members of any Board except at hearings on the appeal. Board members should never personally contact the Applicant, Applicant's representative or Abutters.**

**Any activity in violation of this Code of Ethics shall be brought to the attention of the Chairman. In addition, when a board member is personally contacted by the Applicant, Applicant's representative or an abutter, the board member so contacted shall refer the matter to the board's Agent.**

**This Code of Ethics is not meant to prevent board members from approaching the Chairman or the board's Agent on matters of procedure.**

**Board members should not express or interchange or poll their opinions with another ZBA Board member whether favorable or negative prior to open and deliberative sessions of the actual hearing.**

**When two Board members are visiting the sites together, opinions should be silent.**

**The decision to grant or deny any petition is to be based on the criteria governing the type of appeal. Any Board member who believes that his or her personal feelings or interests might interfere, should not participate in the decision process.**

**A Board member must never disclose or improperly use or discard confidential documentation or other information acquired in the course of his or her duties unless that documentation has been publicly released with proper authority.**

**Article XVIII. AMENDMENT TO THE BY LAWS & RULES OF PROCEDURE**

**These Rules of Procedures and By Laws may be amended by a majority vote of all members and alternate members present and voting provided that such amendment is read and approved at a minimum of two successive meetings.**