

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

**Article 1 – AUTHORITY**

**1.1** These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA), [676:1](#), and [the zoning ordinance](#) and [map](#) of the town of Salem, New Hampshire.

**Article 2 – MEMBERS**

**2.1** The ZBA shall consist of five elected regular members, and up to five alternate members selected by the regular members as authorized by [RSA 673:6](#). Alternates should attend all meetings to familiarize themselves with the workings of the Board and be ready to serve whenever a regular member of the Board is unable to fulfill their responsibilities.

**2.2** Selection, qualification, terms of office, removal of members, and filling of vacancies shall be in accordance with Town Meeting vote and conform to [RSA 673](#).

**2.3** Each newly elected or appointed (including re-elected or re-appointed) member shall be sworn in and take an oath of office as required by [RSA 42:1](#).

**2.4** The ZBA agent shall forward the appointment/election and expiration dates of the terms of each member of the Board to the Town Clerk.

**2.5** All members must be residents of Salem, New Hampshire.

**2.6** Unless there are extenuating circumstances or prior approval from the Chair, any regular member who is absent for three (3) consecutive meetings or greater than fifty (50) percent of meetings in a calendar year shall be recommended by the Chair to the Board of Selectmen for removal from the Board. Per [RSA 673:13](#), the Board of Selectmen may remove an elected member or alternate member upon written findings of inefficiency, neglect of duty, or malfeasance in office, after a public hearing.

**Article 3 – OFFICERS AND AGENT**

**3.1** Officers. ZBA officers shall be elected annually, at the first regular ZBA meeting following the annual Town Meeting election, by a majority vote of the Board. Officers of the ZBA shall be as follows:

- a. A Chair who shall preside over all meetings and hearings, affix his/her signature in the name of the Board, prepare an annual report, and perform other duties customary to the office. The Chair shall be responsible for the conduct and decorum of the meeting. The Chair shall have the responsibility to ensure that all parties receive a full and fair hearing before the ZBA. The Chair shall enforce the rules herein and applicable State laws.
- b. A Vice-Chair who shall preside in the absence or at the request of the Chair; and who shall have the full powers of the Chair on matters which come before the Board while so presiding.
- c. A Secretary who shall maintain a record of all meetings and site visits, transactions, and decisions of the ZBA, and perform such other duties as the Board may direct by resolution. The ZBA may retain a recording secretary whose records shall be reviewed by the Secretary for accuracy.

1 **3.2** Agent. The Town Manager shall designate a Town employee as agent for the ZBA.

- 2
- 3 a. The Agent shall be responsible for providing applicants with application forms, providing
- 4 each Board member with an information packet before each meeting. The packet shall
- 5 include a meeting agenda, copies of application forms for each item on the agenda, and other
- 6 information that the Board may request or the Agent may deem to be necessary.
- 7
- 8 b. The Agent shall set agendas, issue notices of all meetings, record the names of the members
- 9 present, notify applicants and abutters of hearings, and prepare such correspondence and
- 10 fulfill such duties as the Board may specify.
- 11
- 12 c. The Agent may sign correspondence, applications, memos, and plans on behalf of the Board.
- 13

14 **Article 4 – MEETINGS**

15

16 **4.1** A “Meeting” is defined as the convening of a quorum of the ZBA to discuss or act upon a matter

17 over which the ZBA has supervision, control, jurisdiction, or advisory power. Meetings include

18 gatherings such as regular and special meetings, public hearings, site-visits, and workshops.

19

20 **4.2** Regular meetings will normally be held on the first Tuesday of each month in the Knightly Meeting

21 Room at the Salem Town Hall or a location as designated, commencing at 7:00 PM. The ZBA may

22 vote to set other dates, places, or starting times for a particular meeting.

23

24 **4.3** Regular or special meetings of the Board may be recessed to a time and place certain as a

25 continuation of said meeting without further notice.

26

27 **4.4** All meetings of the Board shall be held in accordance with [RSA 91-A:2](#) and [RSA 91-A:3](#) as exists or

28 may be amended, relating to meetings open to the public and nonpublic sessions.

29

30 **4.5** Quorum: For all meetings, a quorum shall be three members, including alternates sitting in place

31 of regular members.

32

- 33 a. If a quorum of three members is not present, no cases will be heard.
- 34
- 35 b. If there are less than five members (including alternates) present, the Chair shall give the
- 36 applicant an option to proceed, or not. The applicant’s decision to proceed with less than
- 37 five members present does not solely constitute grounds for a rehearing should the
- 38 application fail.
- 39

40 **4.6** Alternates: If any regular member is late for, or absent from a meeting or hearing, or disqualifies

41 her/himself from sitting on a particular case, the Chair shall designate one of the alternate

42 members to sit in place of the late, absent, or disqualified member. Such alternate shall be in all

43 respects a full member of the Board while so sitting.

44

- 45 a. Except for disqualification, when a regular member attends subsequent meetings, or arrives
- 46 after the start of a meeting, the alternate shall yield back to the regular member upon his/her
- 47 arrival after the hearing in progress is finished, or at the option of the Chair.
- 48
- 49 b. Because the presence of alternates is intended, under these rules, to be on an “as-needed”
- 50 basis, it is incumbent on every regular ZBA member to review agendas in advance of
- 51 meetings and to advise the Chair and Agent when they expect to be (i) late, (ii) unable to
- 52 attend, or (iii) expect to recuse themselves from an agenda item.
- 53

- c. Alternates shall be activated on a rotating basis from those present at a particular meeting.
- d. When an alternate is not designated to participate in a case, the alternate shall not participate in the discussion or deliberation on such case, except to the extent that members of the public are generally allowed to so participate.
- e. Once selected for a case because of disqualification, the designated alternate shall participate in all hearings and proceedings on that given application, and shall have all the powers and duties of the replaced regular member as it relates to that case. The designated alternate shall be responsible to verify when this matter is scheduled for further consideration by the ZBA and be present at that time.

**4.7** Disqualification: [RSA 673:14](#) stipulates that any member who has a direct personal or pecuniary interest in the outcome of a case must disqualify her/himself. A member must step down if she/he would be disqualified for any cause to act as a juror if the matter were to go to trial. Juror standards, listed in [RSA 500-A:12](#), specify a person may not be a juror if she/he expects to gain or lose upon disposition of a case, is related to either party, has advised or assisted either party, has directly or indirectly given an opinion or formed an opinion, is employed by or employs any party in the case, or does not appear to be indifferent. Further, a member who is an abutter should disqualify her/himself. Please refer to [the Code of the Town of Salem, Chapter 33, Article I Code of Ethics for Boards, Committees and Commissions](#).

- a. If any member finds it necessary to be disqualified from sitting on a particular case as provided in [RSA 673:14](#), she/he shall notify the Chair and agent as soon as possible so that an alternate may be requested to fill the place.
- b. The disqualification shall be announced by either the Chair or the member before the discussion or the public hearing on the application begins. The disqualified member shall leave the table during all deliberations and the public hearing on the matter.
- c. If uncertainty arises as to whether a Member should be disqualified, the ZBA shall, upon request of that member, another member of the Board, or a member of the public, vote on the question of whether that member should be disqualified. Any such request or vote shall be made prior to or at the commencement of any required public hearing. Such vote shall be advisory and non-binding.

**4.8** The Order of Business for meetings (unless modified by the Chair) is:

- a. Call to order
- b. Roll call
- c. The Chair shall address the scope and authority under which the ZBA operates, describe how the meeting will be run, and advise those present of appeals that have been withdrawn.
- d. Adoption of minutes for prior meetings
- e. Public hearings
- f. Rehearing requests
- g. Other business
- h. Communications and miscellaneous
- i. Adjournment

## **Article 5 – APPLICATIONS**

**5.1** Applications for hearings before the ZBA shall be made on forms provided by the Board and shall be presented to the ZBA agent, who shall sign and record the date of receipt.

- 1 **5.2** The ZBA shall reject all applications not substantially complete, including those with improper or  
2 incomplete abutter notification.  
3
- 4 **5.3** The ZBA will not accept an application when the property is involved in litigation and the outcome  
5 of such litigation may materially affect the ZBA's decision.  
6
- 7 **5.4** Any supplemental material from an applicant in addition to the initial application must be  
8 submitted not less than seven (7) days prior to the date of the meeting to be considered by the  
9 ZBA, except for permits and incidental material.  
10
- 11 **5.5** Pursuant to [RSA 676:7](#), a Public Hearing shall be held within 30 days of the date that an application  
12 is received by the ZBA Agent.  
13
- 14 **5.6** Appeals from an administrative decision taken under [RSA 676:5](#) shall be filed within 30 days of the  
15 decision.  
16
- 17 **5.7** Subsequent Applications: An applicant seeking an appeal for a use or condition, which was denied  
18 at an earlier time, can only be legally entitled to consideration if:  
19
- 20 a. A material change of circumstances affecting the merits of the application has occurred; or,
  - 21 b. The application is for a use or condition that materially differs in nature and degree from the  
22 use applied for in the prior proceedings.  
23  
24

## 25 **Article 6 – FORMS and FEES**

- 26
- 27 **6.1** All forms prescribed herein and revisions thereof shall be adopted by the Board and shall become  
28 part of these Rules of Procedure.  
29
- 30 **6.2** Application, notice, and other associated fees shall be adopted by the ZBA after a public hearing.  
31
- 32 **6.3** The applicant shall pay for all required fees in advance. Failure to pay such costs shall constitute  
33 valid grounds for the Board to terminate further consideration and to deny the appeal without  
34 Public Hearing.  
35

## 36 **Article 7 – PUBLIC NOTICE**

- 37
- 38 **7.1** Per [RSA 676:7](#), notice of public hearings shall be given as follows:  
39
- 40 a. The applicant and every abutter and holder of conservation, preservation, or agricultural  
41 preservation restrictions shall be notified of the hearing by certified mail stating the time and  
42 place of the hearing, and such notice shall be given not less than 5 days before the date fixed  
43 for the hearing of the appeal.  
44
  - 45 b. public notice of the hearing shall be placed in a newspaper of general circulation in the area  
46 not less than 5 days before the date fixed for the hearing of the appeal.  
47
- 48 **7.2** Whenever the Board receives an application which it feels may have a potential for regional impact,  
49 it must give notice of the public hearing by certified mail at least 14 days in advance to all affected  
50 municipalities and the regional planning commission, in accordance with [RSA 36:57](#).  
51

1 **7.3** The cost of notice, whether mailed, posted, or published, shall be paid in advance by the applicant.  
2 Failure of the applicant to pay such costs shall constitute valid grounds for the ZBA to terminate  
3 further consideration and to deny the appeal without public hearing.  
4

5 **Article 8 – PUBLIC HEARINGS**  
6

7 **8.1** The Chair shall enforce such order and decorum as may be necessary for the sufficient conduct of  
8 the Board’s business. Further, the Chair shall establish such rules of parliamentary procedure as  
9 are necessary, subject to the provision that the Chair may be overruled by a majority vote of the  
10 Board.  
11

12 **8.2** The Board should not allow testimony by the applicant, public or any Board member, which would  
13 degrade the character of the applicant or abutters or non-abutters.  
14

15 **8.3** Public Hearings shall not commence prior to 7:00 PM nor shall any new items be taken up after  
16 10:30 PM unless otherwise voted by a majority of the Board. However, the Board may continue to  
17 the conclusion of a public hearing on a matter which commenced prior to 10:30 PM.  
18

19 **8.5** The conduct of public hearings shall be governed by the following rules:  
20

- 21 1. The Chair shall read the details of the appeal.
- 22 2. The Agent shall read the list of abutters.
- 23 3. The Chair shall open the public portion of the appeal.
- 24 4. The Applicant and/or their Representative shall present their appeal.
- 25 5. Once the presentation is completed and all questions from Board Members have been  
26 answered, the Chair will recognize those people in the audience who wish to speak in favor  
27 of the appeal.
- 28 6. The Chair shall then recognize those wishing to speak in opposition to the appeal.
- 29 7. The Chair shall then allow the applicant and/or their representative to speak in rebuttal to  
30 any new issues raised by anyone who spoke in favor or in opposition to the appeal.
- 31 8. The Chair shall then recognize those in opposition for rebuttal.
- 32 9. Once all the parties have been allowed to speak and there are no additional questions from  
33 the Board, the Chair shall close the public hearing.
- 34 10. The Chair shall then open the deliberative portion of the appeal, review the relevant facts of  
35 the appeal, and request a motion from the Board.
- 36 11. Any applicant, any abutter or any person with a direct interest in the matter may testify in  
37 person or in writing. Other persons may testify as permitted by the Board at each hearing.
- 38 12. Each person who speaks shall be required to state her/his name and address and indicate  
39 whether she/he is a party to the matter or an agent or counsel to a party to the matter.
- 40 13. Any party to the case who wants to ask a question of another party to the case must do so  
41 through the Chair.  
42

43 **Article 9 – DECISIONS**  
44

45 **9.1** Deliberations: The Board shall decide all cases within 30 days of the close of the public hearing and  
46 shall approve, approve with conditions, or deny the appeal.  
47

48 **9.2** Voting: Action on any appeal to the Board shall be taken on the basis of a motion, duly seconded,  
49 made by any member of the ZBA other than the Chair.  
50

- 51 a. The vote of each member sitting on the appeal shall be taken by a roll call vote called by the  
52 Chair.

- b. The concurrent vote of three sitting members or alternates shall be necessary to decide in favor of any matter before the ZBA. Board members present may be counted to determine whether a quorum exists although they abstain from voting affirmatively or negatively.
- c. A tie vote shall be deemed to defeat the question.
- d. Should a motion result in a tie vote or not receive the necessary three votes to decide in favor of the applicant, the ZBA may put forth a new motion on the application.
- e. Absentee votes by any method, including a letter or e-mail to the Board, are not allowed.
- f. No vote may be taken by secret ballot.
- g. When a meeting includes at least one member participating by telephone or other electronic means, all votes taken during such meeting shall be by roll call vote per [RSA 91-A:2,III,e](#)

**9.3** Conditions:

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

**9.4** Issuance of Decision:

- a. 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. If the application is approved with conditions, the Board shall include in the written decision a detailed description of all conditions necessary for the final approval.
- b. 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 made available for public inspection within five (5) business days of such vote.

**9.5** Tabled Appeals:

- a. On the motion of any member, approved by at least three affirmative votes, an appeal requiring additional information may be tabled to the next regularly scheduled meeting.
- b. 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.
- c. 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.

**9.6** Motions for 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 original applicant. Notification of the rehearing shall follow the procedures set forth in [RSA 676:7](#).

1 **9.7** Expiration of Approvals

- 2
- 3 a. An approval for a variance, special exception, or appeal from administrative decision shall be
- 4 valid if exercised within 2 years from the date of final approval, or as further extended by
- 5 local ordinance or by the Zoning Board of Adjustment for good cause, provided that no such
- 6 variance, special exception, or appeal from an administrative decision shall expire within 6
- 7 months after the resolution of a planning application filed in reliance upon the variance
- 8

9 **Article 10 – RECORDS**

10

11 **10.1** Pursuant to [RSA 91-A:2, II](#) and [RSA 676:3, II](#), the minutes of all public hearings, including the written

12 decision containing the reasons, shall be made available for public inspection within five (5)

13 business days of the meeting.

14

15 **10.2** Board meeting minutes shall be kept in accordance with the provisions of [RSA 91-A](#). Meeting

16 minutes, including the names of Board members, persons appearing before the Board and a brief

17 description of the subject matter and final decisions, shall be open to public inspection within five

18 business days of the public meeting as required in [RSA 91-A:2 II](#). Minutes, once adopted by the

19 Board with any corrections noted, will be the official record of the meeting and will be posted on

20 the [Town’s website](#) in a consistent and reasonably accessible [location](#).

21

22 **10.3** Minutes of site walks shall be kept if there is a quorum present at the site. The record of site visits

23 will be incorporated within the regular meeting minutes.

24

25 **10.4** The records of the Board shall be kept by the ZBA Agent and shall be made available for public

26 inspection at Town Hall as required by [RSA 676:3](#). Copies of minutes will be provided upon request

27 for their reproduction cost.

28

29 **10.5** All meetings of the Board which are public hearings shall be recorded by tape or other electronic

30 device. All meeting materials are considered part of the public record and subject to public review.

31 In the event of a challenge to a decision by the Board, tapes and other records shall be retained by

32 the Town in an appropriate repository for at least one year or until any appeal period has passed,

33 whichever is later.

34

35 **Article 11 – JOINT MEETINGS AND HEARINGS**

36

37 **11.1** [RSA 676:2](#) allows the ZBA to hold joint meetings and hearings with other “land use boards”

38 including the Planning Board and the Historic District Commission, and other non-land use boards.

39 Each Board shall have discretion whether or not to hold such joint meeting or hearing.

40

41 **11.2** Joint meetings with another Board may be held at any time when called jointly by the Chairs of the

42 two boards.

43

44 **11.3** A joint public hearing must be a formal public hearing when the subject matter of the hearing is

45 within the responsibilities of the Boards convened.

46

47 **11.4** The Planning Board Chair shall chair all joint meetings and public hearings when the subject matter

48 involves the Planning Board, per [RSA 676:2](#).

49

50 **11.5** Each Board involved in a joint public hearing makes its own decision, based on its criteria for the

51 particular matter.

52

53

1 **Article 12 – SITE VISITS**

- 2
- 3 **12.1** A “site visit” is defined as a visit by the ZBA members to a location which is the subject of an  
4 application before the Board. This does not include a view of the site from adjoining public roads  
5 or other observations that can be made without entering onto the property.
- 6
- 7 **12.2** Site visits are considered a public meeting and shall therefore comply with [RSA 91-A](#), including  
8 notice, public access, and minutes when a quorum is present.
- 9
- 10 **12.3** During a site visit, ZBA members may ask questions and discuss technical aspects of a proposal with  
11 the applicant or applicant’s agent. However, opinions will not be discussed with the applicant,  
12 applicant’s agent, or other ZBA members.

13

14 **Article 13 – STANDARDS OF CONDUCT**

- 15
- 16 **13.1** The primary obligation of ZBA members is to serve the public interest, and to conduct themselves  
17 so as to maintain public confidence in the ZBA and the conduct of its business.
- 18
- 19 **13.2** Members shall not directly or indirectly solicit any gifts or accept or receive any gift (whether in  
20 money, services, loans, travel, entertainment, hospitality, or in some other form), under  
21 circumstances in which it could be reasonably inferred that the gift was intended to influence them  
22 in the performance of their duties or was intended as a reward for any recommendation or decision  
23 on their part.
- 24
- 25 **13.3** To avoid conflict of interest or even the appearance of impropriety, any member who may receive  
26 some private benefit from a ZBA decision must not participate in that decision. The private benefit  
27 may be direct or indirect; create a material personal gain or provide an advantage to relations,  
28 friends, groups or associations that hold a significant share of the official's loyalty. An official with  
29 a conflict of interest must make that interest public, abstain from voting on the matter, and except  
30 as specified below, leave the table or podium area when Board members deliberate and vote on a  
31 matter. Further, the Board member may not discuss the matter privately with any other Board  
32 member voting on the matter or otherwise communicate directly or indirectly with Board members  
33 regarding the matter in question so as to attempt to influence the vote on said question.
- 34
- 35 **13.4** In circumstances where the number of Board members who may not participate as a result of the  
36 provision of Article 12.3 results in less than a quorum being able to participate in a given question,  
37 the abstaining members may be counted as "present" for purposes of determining whether a  
38 quorum is present although they are not allowed to participate in any way other than abstaining.  
39 A Board member who is participating only for the purpose of being counted for the presence of a  
40 quorum shall be entitled to sit at the podium, provided that he/she not participate, comment, or  
41 make any indication of his/her position.
- 42
- 43 **13.5** A Board member must not disclose or improperly use confidential information obtained in the  
44 course of his duties for financial gains or to further a personal interest.
- 45
- 46 **13.6** All Board members share a responsibility to enforce adherence to the standards of conduct herein.  
47 If a member believes that one or more members may, either by intention or inadvertence, be in  
48 violation of these standards, s/he shall call that fact to the attention of the Chair who shall in turn  
49 call it to the attention of the member in question.
- 50
- 51 **13.7** All discussions between ZBA members and applicants or their agents regarding matters to be  
52 decided by the Board shall take place at public hearings as part of the public record.
- 53
- 54 **13.8** ZBA members who have legal or other problems that reflect poorly on the Board should step down  
55 at least temporarily until their problems are resolved.



1 **13.9** [The Code of the Town of Salem, Chapter 33, Article I Code of Ethics for Boards, Committees, and](#)  
2 [Commissions](#) applies to all ZBA members.

3

4 **Article 14 – AMENDMENT**

5

6 **14.1** These Rules of Procedure may be amended, following a public hearing, by majority vote of the  
7 Board. The amended Rules of Procedure shall be filed with the Town Clerk and be available for  
8 public inspection pursuant to [RSA 676:1](#).

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12 Last revision adopted January 4, 2022

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