



CITY OF MANCHESTER

ZONING BOARD OF ADJUSTMENT

BY-LAWS AND RULES FOR THE

TRANSACTION OF BUSINESS

ARTICLE I - AUTHORITY

The Board of Adjustment of Manchester, New Hampshire, of Hillsborough County, shall have such rights, powers and duties as are conferred or imposed upon it by the Board of Mayor and Aldermen in accordance with Chapter 676:1, New Hampshire Revised Statutes Annotated and the Zoning Ordinance of the City of Manchester and any amendment(s) thereto.

ARTICLE II - APPOINTMENT AND TERMS OF MEMBERS

The Manchester Zoning Board of Adjustment consists of 5 members who are appointed by the Mayor and confirmed by the Board of Mayor and Aldermen for a term of 3 years consistent with state law, RSA 673:5, starting every March 1st. of each year. Each member must be a resident of the municipality.

Members of boards or commissions shall serve for (3) year terms and shall be limited to two (2) consecutive full terms on the same board. (A full term shall be considered a term of two (2) years or more.) No member shall take office for a term, having served two (2) consecutive terms, unless two (2) years shall have elapsed since such member completed the second consecutive term. (City Charter Section 3.14 (d), adopted 7/01/97)

No member shall serve as a holdover for more than 90 days after expiration of any term. All members shall continue to serve until re-appointed or a successor has been appointed under the provisions of the city charter. At the end of such period, the office shall become vacant unless the mayor re-appoints a replacement. The mayor shall submit a nomination to the aldermen for confirmation. Such confirmation vote shall require the votes of nine aldermen. If the nominee is not confirmed, the mayor shall be entitled to nominate a new candidate within 90 days. (City Charter Section 3.14 (g)).

One member of the Planning Board (regular or alternate) may serve on the Board of Adjustment. RSA 673:7

Alternate Members may be appointed by the Mayor and confirmed by the Board of Mayor and Aldermen in a manner consistent with State Statute and City Ordinance.

Whenever a regular member of the Board of Adjustment is absent or disqualifies himself from consideration and action on a matter before the Board, the Chairman shall designate an Alternate, if one is present, who has been appointed in accordance with RSA 673:6, to act in the member's place. The alternate should be clearly noted for the record.

If any board member who fails to attend one-third of the regularly scheduled meetings of the board during a calendar year or misses four consecutive meetings of the board, the record of attendance shall be reported to the mayor and aldermen who, upon finding of no reasonable explanation of such absences, shall declare the office vacant (City Charter 3.14 (f)).

After finding by the board of aldermen that there is cause to remove a member of a board of the city, the member may be removed by a vote of nine aldermen voting on a motion stating specific reasons (City Charter 3.14 (e)).

ARTICLE III - OFFICERS AND STAFF

A Chairperson shall be elected annually by a majority vote of the Board of Adjustment in the month of March, or at the Board's discretion, for a term of one year (RSA 673:8). He/She is eligible for re-election. The Chairperson 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.

A Vice-Chairman shall be elected annually by a majority vote of the Board in the month of March, or at the Board's discretion, for a term of one year. He/She is eligible for re-election. The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters which come before the Board during the absence of the Chairperson.

ARTICLE IV - DISQUALIFICATION

Any person who has a direct personal or financial interest in an appeal should disqualify himself/herself and be replaced by an Alternate Member. When a Board Member is disqualified, the Chairperson may designate an Alternate Member to fill the seat. The Alternate should be clearly noted in the records. RSA 673:14

The member disqualifying himself/herself shall absent himself/herself from the Board table during the public hearing and all deliberation on the case.

ARTICLE V - QUORUM

A quorum for all meetings of the Board shall be three members, which may include alternates sitting in place of an absent member. The concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass. RSA 674:33 III

ARTICLE VI - APPLICATIONS TO THE ZBA

The Zoning Board has the authority to act in the following categories: Variances, Special Exceptions, Appeals of the Administrative Decision, the Planning Board, the Heritage Commission and Equitable Waivers. No case can be acted upon without a Public Hearing. The Board strongly recommends that before making any appeal that the applicant is familiar with the Manchester, NH Zoning Ordinance and with New Hampshire Statutes (RSA) Chapters 672 to 677.

VARIANCE

Relief granted by the Board cannot be limited to a particular individual nor can it be limited to a specific period of time. Variances stay with the property and can be used by the present and subsequent owners. Financial hardship in and of itself does not warrant the granting of a variance.

To obtain a variance, an applicant must make a persuasive showing to each item in five-part criteria that:

- (1) The variance will not be contrary to the public interest;

- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

RSA 674:33, I(b) (Effective 2009) Amended by ZBA 2016.

The Zoning Board of Adjustment may grant a variance from the terms of the 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 be in harmony with the general purpose and intent of the zoning ordinance and (b) the variance shall survive only so long as the particular person has a continuing need to use the premises. RSA 674:33 V (Effective 8/17/98). Amended by the ZBA 7/20/00.

SPECIAL EXCEPTION

Under state law, terms of a zoning ordinance and its self-described purposes establish the test for granting special exceptions. Special Exception is a permitted use if it meets each of the following criteria:

1. Appropriate location.
2. The use will not adversely affect the neighborhood.
3. The use will not cause undue nuisance/serious hazard to vehicles/pedestrians.
4. Structure/Operation will ensure proper operation.

APPEAL OF AN ADMINISTRATIVE DECISION

Under RSA 676:5, the Zoning Board of Adjustment has the power to hear and decide on appeals from a written administrative decision involving interpretation or application of the terms of the Zoning

Ordinance within 30 days* of said decision. The appeal will be granted if the applicant can prove that the decision was made in error. A copy of the decision appealed from must be attached to the application.

*Amended by the Board on 4/11/94.

The Zoning Board of Adjustment may reverse or affirm, 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.

Article 13 of the Zoning Ordinance deals with impact fees. Section 13.06 provides for appeals as follows: "Any aggrieved party may appeal the provisions of this Article to the Zoning Board of Adjustment, as established in Article 14 of the Zoning Ordinance. Where the appeal is on the amount of the fee to be paid, the party shall first have exhausted its options available through the Planning Board under Section 13.09 (2). In such cases, the party shall prepare an independent fee calculation study for the new development activity which is proposed and shall provide a copy of the action to the Planning Board. All costs incurred by the City for the review of such study shall be paid by the party." (Per Zoning Ordinance, adopted 2/07/01)

APPEAL OF A PLANNING BOARD DECISION

Under RSA 676:5 III, if, in the exercise of subdivision or site plan review, the Planning Board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional use permits, to the Planning Board, then the Planning Board's decision made pursuant to that delegation cannot be appealed to the board of adjustment but may be appealed to the

superior court, as provided by RSA 677:15. Appeals to the ZBA must be made within 30 days of the date of the decision.

APPEAL OF A HERITAGE COMMISSION DECISION

Under RSA 674:44-a, which allows local government to establish a Heritage Commission, any person or persons, jointly or severally aggrieved by a decision of the Heritage Commission shall have the right to appeal concerning such decision to the Zoning Board of Adjustment.

EQUITABLE WAIVER

Under RSA 674:33-a, the Zoning Board of Adjustment has the authority to grant an "equitable waiver" for a pre-existing violation of a dimensional requirement imposed by the Zoning Ordinance. (Effective 1/01/97). Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements and not from use restrictions. The applicant may choose the option of completing Part I or Part II as applicable.

Part I:

Upon application by, and with the burden of proof on, the property owner, the Board must find that:

- A. The violation was not discovered by any owner, owner's agent or municipality official until after any structure that is in violation was substantially completed or until after a lot or other division of land in violation had been sold to an innocent buyer.
- B. The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent or by error in applying the ordinance made by a municipal official who issued a permit that should not have issued.
- C. The physical or dimensional violation does not constitute a public or private nuisance, does not diminish the value of other property in the area and does not interfere with any present or permissible future uses of other property.
- D. Due to the investment made in ignorance of the violation, the cost of correcting it so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.

Part II:

In lieu of findings required by the Board under items (A) and (B), the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action has been taken by the municipality or any person directly affected.

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 or to persuasively show why the appeal should be granted.

ARTICLE VII - APPLICATIONS TO THE ZBA

ACCEPTANCE OF APPLICATIONS

The Zoning 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.

FEES FOR APPEAL

Pursuant to RSA 676:5 (1V), the Zoning Board of Adjustment may impose reasonable fees to cover its administrative costs, and any such fees shall be subject to the provisions of RSA 673:16

*Amended 09/02/14

The following fees shall apply to ZBA applications:

- Application Fee (non-refundable) \$ 25.00

- Legal Notice (per abutter) \$ 10.00
- Dimensional and Use Variances, Special Exceptions, Administrative Appeals and Equitable Waivers \$350.00
- Re-Hearing \$ 85.00

FORMAL APPLICATION SUBMISSIONS

- Building Permit Denial.
- Completed ZBA forms (Variance, Special Exception, Appeal of the Administrative Decision or Equitable waver), signed.
- The plot plan, as submitted to the Building Department, showing setbacks, parking, driveway, ROWs and accessory structures. A certified plot plan may be required. *Amended by the ZBA 7/20/00
- A floor plan, model or picture of proposal.
- A signed affidavit from the owner if the applicant does not own the property.
- Any proposed signage, graphically depicted, showing the overall height and location on the site.
- Any supporting documents that would be helpful to the Board in making its decision.
- A list of abutters to the property, as defined in RSA 672:3
- Application fee must be received before paperwork is processed.
- Material submitted in support of the application must be no larger than 11” x 17” except that one review set must be full scale.
- Each application will be reviewed for completeness, accuracy and compliance with the zoning ordinance. This review may take up to 30 days. An application is not complete until it has been reviewed by staff to the Zoning Board.
- The public hearing shall be held within 30 days of the receipt of properly completed application. (RSA 676:7).

ARTICLE XIII - CONDITIONS

In both the Variance and Special Exception, the ZBA may impose conditions or stipulations that must be adhered to by the present and subsequent owner(s).

If the applicant disputes these conditions, he/she may submit a request for re-hearing to the department within 30 days, * of said decision. (RSA 674:4 effective 1/01/01) *Amended by ZBA 4/09/01.

ARTICLE IX - TABLED CASES

Any case requiring additional information will be "Tabled" for 30 days. An applicant may request an extension of time but it is not to exceed 90 days from the public hearing. When a decision is made, thereafter, the applicant will receive notification of the decision by mail.

ARTICLE X - NOTICE OF DECISIONS

Notice of the Board's Decisions will be made available for public inspection within five days. (RSA 676:3). If the appeal is denied, the notice will include the reasons for denial.

ARTICLE XI - EXPIRATION DATE

The applicant whose variance or special exception has been granted, must obtain his/her building permit within two years, otherwise the approval will expire. If a planning application is submitted in reliance upon the variance, the variance shall not expire within 6 months of resolution of the planning application. It is suggested that construction not begin until 30 days after the decision, should the case come under appeal by an abutter or other evidence arises. *Amended by ZBA 4/09/01 to reflect new Z.O. adopted 2/07/01. RSA 674:33, I-a

ARTICLE XII- APPEALING THE BOARD'S DECISION

When the Board denies a request, the applicant/agent may file for a rehearing by the Board within 30 days* of said decision (RSA 677:2). The rehearing process allows the Board of Adjustment to reconsider their action before appeals are filed with the court. *Amended by the ZBA 4/09/01 to reflect change in RSA.

Any aggrieved abutter or person affected by the Board's decision may also request a rehearing. In order to re-file, the abutter must show cause as to why the case should be reheard.

If the request for rehearing is denied, the applicant/agent has 30 days to appeal to Superior Court (RSA 677:4).

If the request for rehearing is granted and the Board reaffirms or reverses their previous decision the aggrieved party may take the appeal directly to Superior Court.

ARTICLE XIII - SUBSEQUENT APPLICATIONS:

If a property has had a previous variance or special exception denied by the ZBA, any new appeal for the same or a similar use or condition must be reviewed by the Board to warrant acceptance for public hearing. If granted, the case will be heard at that meeting. If denied, the applicant may appeal the Board's decision within 30 days*. This policy has been adopted to deter the same appeals from repeatedly coming

to the Board without any new justification. (Subsequent Application adopted 4/16/91). *Amended by ZBA 4/09/01 to reflect change in RSA 677:2.

ARTICLE XIV - MEETINGS AND HEARINGS

Public Hearings on appeals to the Board of Adjustment will normally be held in the Aldermanic Chambers, City Hall, One City Hall Plaza, on the second Thursday of each month beginning at 6:00 PM unless otherwise noted. *Reflects change in hearing dates, which began January, 2010.

Notice of Public Hearing shall be sent to the applicant and every abutter, and shall be published in the newspaper (RSA 676:7). Also, notifications will be sent to the Aldermen and the Mayor. Notifications are issued at least 5 days prior to the hearing.

Administrative meetings may be held on the call of the Chairman. Notice of date and time shall be sent to the Board Members and posted publicly in at least two separate public places within 24 hours of such meeting noting its agenda. RSA 673:10

The Board may meet in Executive Session in accordance with RSA 91-A:3.

BUSINESS MEETINGS

ORDER OF BUSINESS

- The Chairman calls the business meeting to order.
- Introductions of board members and staff.
- Administrative Matters – approval of minutes of previous business meeting and public hearing.
- Regulatory Matters – action by the board on tabled cases; request for rehearing and subsequent applications.
- Other Business – any correspondence or business matters that require board action.
- Court Cases – new cases, status on pending cases and recent rulings.
- New Business – any concerns or discussion by the board members.
- With no other business before the board, a motion will be made to adjourn the business meeting.

PUBLIC HEARINGS

ORDER OF BUSINESS:

- The Chairman calls the hearing to order.
- Introduction of board members and staff.

- Brief format of the ZBA’s authority, its procedures and responsibility of the applicant/representative.
- Handouts distributed to those in attendance at the hearing.
- Oath taken by those wishing to give testimony.
- All public hearings are recorded and each speaker is asked to identify himself/herself.
- The applicant does not have to be present to have the case heard but should the Board have questions or concerns with the appeal, the case may be tabled.
- The Chairman calls the applicant/agent to come forward to make their presentation and asks if there is anything that they would like to add that was not previously given in the packet.
- Each board member is given the opportunity to ask questions. Alternate members are permitted to participate in the finding of facts and deliberations.
- The Chairman will ask if there is anyone wishing to speak in favor or in opposition to the request.
- The applicant is allowed a rebuttal.
- Additional testimony from the public may be allowed to respond to the applicant’s rebuttal.
- The Chairman may limit testimony as deemed necessary.
- Final Board questions or comments.

ARTICLE XV- VISIT GUIDELINES:

- Members of the ZBA are encouraged to visit the sites for each of the applications before the Board as a part of the finding of fact process prior to the Public Hearing.
- Members must view the site from publicly accessible rights of ways.
- Members may take notes or photographs to supplement their materials to be referred to during the public hearing.
- When approached by applicants or abutters, members must identify themselves but not engage in “ex parte” conversations material to the application and politely point out that the Public Hearing is the time and place for such input.

*Article XV adopted by the ZBA on 6/05/03.

ARTICLE XVI- AMENDMENTS:

These By-laws and Rules for the Transaction of Business may be amended by a majority vote of the full Board.

BY-LAWS AND RULES FOR THE TRANSACTION OF BUSINESS adopted April 26, 1993.
Amendments to by-laws were made on 4/11/94, 7/20/00, 4/09/01, 6/05/03, 7/01/04, 1/14/10, 2/9/12,
9/2/14, and 3/XX/16 by the Manchester, NH Zoning Board of Adjustment.

(Rev. 2/4//2014)