

TOWN OF BOW

Zoning Board of Adjustment

10 Grandview Road, Bow, New Hampshire 03304

Phone (603) 228-1187 | Fax (603) 225-2982 | Website www.bow-nh.gov

RULES OF PROCEDURE

ZONING BOARD OF ADJUSTMENT

I. GENERAL

- A. These rules shall govern the procedures by which the Zoning Board of Adjustment (ZBA or Board) shall conduct its business.
- B. The ZBA consists of five (5) regular members and up to five (5) alternate members, each appointed by the Board of Selectmen to serve a three (3) year term.

II. OFFICERS

- A. Annually, the ZBA shall elect officers at a regular meeting which occurs after the Board of Selectmen have made appointments for the coming year as soon as practical after the annual Town meeting.
- B. The officers of the ZBA shall be regular members of the ZBA and include a Chair, a Vice Chair and a Secretary. The officers shall serve as officers until they resign or until their successors have been duly elected.
- C. The duties and responsibilities of the officers are as follows:
 1. The Chair shall preside over all meetings of the ZBA. The Chair shall be the spokesman for the ZBA and shall be responsible, in coordination with the ZBA's Recording Secretary, for receiving and sending communications relative to the ZBA's business.
 2. The Vice Chair shall exercise the duties of the Chair in the absence or unavailability of the Chair, when the Chair specifically requests or if the Chair refuses to exercise the duties of the Chair under the conditions set forth in Rule IV F.
 3. The Secretary shall sign all the Board-approved minutes of the meetings of the ZBA. In the absence or unavailability of the Chair and the Vice Chair, the Secretary shall exercise the duties of the Chair.
 4. A Recording Secretary shall be hired to prepare accurate minutes of the meetings of the ZBA, shall be responsible to see that all required notices are posted, published, and mailed prior to each such meeting and shall perform any other duties directed by the ZBA. The Recording Secretary shall have no vote.

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5. In the absence or unavailability of the Chair, Vice Chair and Secretary, the members present shall select a Regular Member to exercise the duties of the Chair.

III. COMMUNICATIONS

All written communications to the ZBA shall be directed to:

Chairman of the Bow Zoning Board of Adjustment
c/o Community Development Department
Bow Municipal Building
10 Grandview Road
Bow, NH 03304

IV. MEETINGS, APPLICATIONS AND FEES

- A. All meetings of the ZBA are open to the public except when the ZBA shall vote to enter nonpublic session.
- B. When authorized by RSA 91-A:3, the ZBA may hold all or a portion of a meeting in nonpublic session upon the majority roll call vote in favor of a motion to that effect.
- C. All regular and alternate members of the ZBA are expected to attend all meetings. Alternate members are entitled to participate as non-voting members in all proceedings of the ZBA. If less than all the regular members of the ZBA are present at a meeting or if a regular member recuses him/herself, the Chair shall have the discretion to designate alternate member(s) to vote in place of the regular member(s).
- D. Any action of the ZBA must be by majority vote of those voting members present. On administrative matters (approving minutes, election of officers, etc.) every member is entitled to vote. The vote of each voting member shall be recorded as favoring or opposing. The Chair may elect to vote at any time.
- E. A quorum of the ZBA shall consist of a total of three (3) members. The concurring vote of any three (3) members of the ZBA shall be necessary to take any action on any matter on which it is required to pass. See Rule VIII C with respect to voting procedures for variance applications.
- F. If the Chair or Acting Chair refuses to exercise the duties of the Chair at a meeting, any member present can call a motion on the table to vote or make a motion to have another member assume the Chair's duties. If such motion receives a majority vote, then said member shall assume the Chair's duties at such meeting.
- G. Unless otherwise designated in the public notices, all meetings of the ZBA will be held at the Town Municipal Building, Meeting Room "C", 10 Grandview Road, Bow, NH, on the third Tuesday of every month at 7:30 PM. At the discretion of the Chair, special meetings may be called.
- H. The agenda for the regular monthly meeting shall close ten (10) calendar days prior to the posted meeting date.

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- I. All applications requesting or requiring action by the ZBA (including notices of appeal and all other applications for appeals or rehearings) shall be hand delivered to and recorded by the Community Development Department on Town-prescribed forms, when available. (See Rule VI for additional requirements with respect to certain appeals.) A non-refundable fee shall be submitted with each such application to cover the costs of the advertising, notification, and processing of the application as well as any special investigative studies deemed necessary by the ZBA. If the application is withdrawn or is not accepted, the fee will be returned within thirty (30) days to the applicant, less an administration fee and less any expenses incurred by the Town for advertising, notification or processing of the application.
- J. All applications, plans (with one set not greater than 11" x 17") and supplemental material shall be filed at least (21) calendar days prior to a scheduled meeting in order to be considered by the ZBA.
- K. At the discretion of the Chair, any application not considered by the ZBA by 10:45 PM will be continued to the next regularly scheduled meeting or to another time and place announced at the time. Subject to the discretion of the Chair, meetings shall be adjourned by 11:00 PM. No new notice of the continuance or adjourned meeting will be provided.
- L. Members of the public shall be allowed to observe, record, film and/or videotape ZBA meetings so long as they are not disruptive and do not interfere with the conduct of the ZBA's business. In the event of disruptions, the Chair may order the offending parties to leave the meeting room or cease the activities that are causing the disturbance.
- M. The ZBA shall record all of the proceedings and, except where the ZBA otherwise decides, shall keep such recordings at least until the minutes of the meeting are formally approved by the ZBA or the appeal period has expired, whichever is later. The requestor of any copies of a recorded meeting must bear the expense of such copies made at his/her request.
- N. In addition to the fees described elsewhere in these rules, an applicant may be required by the ZBA from time to time to pay reasonable fees (as determined by the ZBA) to cover the ZBA's administrative expenses and costs of consultant services or special investigative studies (including but not limited to third-party review and consultation), review of documents, deposition costs and other matters which the ZBA determines may be required by a particular appeal or application, including any subsequent legal action related thereto, to the extent permitted by RSA 673:16, RSA 676:5, IV, RSA 676:5, V(a) and/or other applicable law. The ZBA may require that such fees and expenses (or a portion thereof) be paid to the Town in advance for deposit in an escrow or other separate account and may also require that supplemental payments be made from time to time in order to refresh such account.

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V. RECEIPT OF APPLICATIONS

- A. Before a public hearing will be scheduled, the Community Development Department shall receive and review the applicant's submission for completeness and compliance with the ZBA's rules, the Bow Zoning Ordinance and other applicable law.
- B. The burden of proof is upon the applicant to present sufficient evidence to the ZBA to permit the ZBA to grant the relief requested.
- C. Upon receipt of an application, a site walk may be scheduled at the Chair's discretion prior to holding the public hearing. The applicant and/or a duly designated and authorized representative is/are expected to be present at the site walk. Site walks are official ZBA business and members of the public are allowed to attend; however, any comments or concerns made or observed at a site walk must be raised during the public hearing to be considered part of the record.

VI. ADDITIONAL PROVISIONS REGARDING TIME LIMITS AND PROCEDURE FOR FILING CERTAIN APPEALS

- A. Appeals to the ZBA concerning any matter within the board's powers (including but not limited to the powers set forth in RSA 674:33, RSA 674:34 and Section 13.02 of the Bow Zoning Ordinance) shall be taken within a reasonable time.
- B. In the case of any appeal to the ZBA where it is alleged that there is an error in any order, requirement, decision or determination made by any Town building or zoning official, fire official or other administrative officer or official in the administration, enforcement, application or interpretation of the Bow Zoning Ordinance, the Bow Building Code, the State Building Code or the State Fire Code, such appeal shall be taken within a reasonable time by filing with the officer or official from whom the appeal is taken and with the ZBA a notice of appeal specifying the grounds thereof.
- C. For purposes of the preceding paragraph B of this rule, a "reasonable time" shall mean thirty (30) days from the date of such order, requirement, decision or determination or from the date on which the applicant for appeal (or his, her or its agent or representative) learned or reasonably could have learned of the order, requirement, decision or determination, as determined by the ZBA. The ZBA may, in its discretion, waive or extend said time limitation if in its opinion good reason for such waiver or extension is provided by the applicant.
- D. With respect to appeals pursuant to RSA 674:34, the ZBA shall act in its capacity as the Building Code Board of Appeals.

VII. PUBLIC HEARINGS

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- A. All submissions and supplemental material submitted following receipt of an application, should be filed at least ten (10) calendar days prior to a scheduled hearing in order to be considered by the ZBA at the hearing.
- B. At the public hearing, the Chair shall afford the applicant and his/her duly designated and authorized agent(s) an opportunity to present the proposal and respond to any questions or concerns expressed by the ZBA. The burden of proof is upon the applicant to present sufficient evidence to the ZBA to permit the ZBA to grant the relief the applicant is requesting.
- C. Abutters, persons with a direct interest in the application, and Town officials or their agents may testify in person at the hearing or in writing at or before the public hearing. Town residents and others not described above will be permitted to testify at the discretion of the Chair.
- D. Persons requesting to speak during the hearing shall address all comments to the ZBA, and to the Chair in particular. All speakers must state their name and address.
- E. The Chair shall have the discretion to limit the time and scope of the public hearing. Each speaker who is neither an Abutter, nor one who has a direct interest in the application, nor a Town official may be limited to five (5) minutes, and all others to a reasonable time. Each speaker may be limited to two (2) opportunities to address the ZBA at one hearing. Those who wish to testify are encouraged to submit their comments in writing in advance of a hearing to assure that their comments will be conveyed to the ZBA even if time prevents them from fully expressing their views at the hearing.
- F. The Chair shall close the public hearing after all parties have been heard and the ZBA shall proceed to consider action on the application.

VIII. ZBA DELIBERATIONS AND DECISIONS

- A. The ZBA shall deliberate the merits of any application after the Chair closes the public hearing.
- B. ZBA deliberations shall be conducted in a manner so as to permit all members of the ZBA (including non-voting alternate members) to express opinions, influence voting, and ensure that the questions(s) before the ZBA are considered, deliberated, and ultimately decided in an orderly fashion.
- C. The ZBA shall determine whether to grant a variance by voting separately on each of the criteria that are set forth in RSA 674:33, I (a) (2) (which criteria are also set forth in Section 13.02 B of the Bow Zoning Ordinance). The ZBA shall grant a variance only if three (3) members vote in the affirmative on all such criteria.
- D. The ZBA shall act on applications and issue decisions as set forth in Sections 13.03.F & 13.03.G of the Bow Zoning Ordinance and RSA 676:3.

IX. REHEARING

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- A. Within thirty (30) days after a decision of the ZBA, any party to the action or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the decision, and must specify such grounds in the motion for rehearing. The ZBA may grant a rehearing if, in the opinion of the ZBA, there is good reason for such based on the motion. See Section 13.03.H of the Bow Zoning Ordinance and RSA 677:2.

X. JOINT MEETINGS OR HEARINGS

- A. As set forth in RSA 676:2, two or more land use boards, including the ZBA, may at their discretion hold a joint meeting or hearing when the subject matter of the requested permit is within the responsibility of those land use boards, either at the request of the applicant or at the request of one of the land use boards. When meeting jointly, both land use boards are meeting in their full capacity with full authority to make decisions.
- B. Not less than a quorum of each involved board shall attend the joint hearing or meeting.
- C. The Planning Board Chair shall chair joint meetings unless the Planning Board is not involved with the subject matter of the requested permit. In that situation, the board members present shall select an interim Chair from among the members.
- D. Except as modified by these rules, the land use boards shall follow their usual procedures when conducting a joint meeting to the extent that it is reasonable and appropriate to do so. To the extent that the usual procedures are inconsistent with one another, the land use boards may vote to jointly adopt rules of procedure that are equitable to expedite the joint hearing process.
- E. Both boards shall keep their own minutes of the meeting or hearing.
- F. The procedure for a hearing shall be as follows:
 - 1. The applicant shall first make his/her presentation.
 - 2. At the close of the presentation, the members of the two boards shall have the opportunity to ask any questions.
 - 3. After all the board members have asked all of the questions they have at that time, comments and testimony shall be taken from the public.
 - 4. After all public testimony is received, the boards shall jointly discuss the application as it affects the land use boards. The board members shall feel free to ask questions of their fellow board members as well as members of the other board. The purpose of this portion of the process is to allow the boards to exchange their concerns and ideas.
 - 5. Each board may separately deliberate the application and make a decision as it relates to that particular board's area of authority.
 - 6. The Chairs of the respective boards shall chair the separate deliberations.

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- G. Each board shall provide separate notice to the applicant of any official actions taken by the boards at the joint meeting.

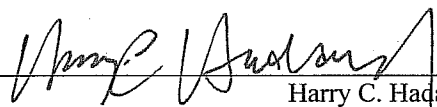
XI. MISCELLANEOUS

- A. These rules may be amended at any regular meeting of the ZBA.
- B. Except as may be otherwise restricted by law, the ZBA may, upon motion by any member of the ZBA and by majority vote, waive compliance with any provisions of these rules.

ADOPTED: JULY 26, 1988

PREVIOUS AMENDMENTS: JUNE 17, 1997
MARCH 16, 1999
JANUARY 16, 2001
APRIL 15, 2008
APRIL 21, 2009
JANUARY 17, 2012
JUNE 17, 2014
AUGUST 19, 2014
FEBRUARY 2016
OCTOBER 2016
JULY 2017

CURRENT (LATEST) AMENDMENT: October 16, 2018.

ZBA CHAIR: 
Harry C. Hadaway, Jr.

Date 1/15/19

