**BOARD OF ADJUSTMENT**

**TOWN OF NEWMARKET**

**RULES OF PROCEDURE**

**Amended & Approved 11/18/19**

**AUTHORITY**

1. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance and map of the Town of Newmarket.

**OFFICERS**

1. **A chairman** shall be elected annually by a majority vote of the Board at the first Zoning Board of Adjustment meeting following Town elections in March. The chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the Board.

2. **A vice-chairman** shall be elected annually by a majority vote of the Board at the first Board of Adjustment meeting following Town elections in March. The vice-chairman shall preside in the absence of the chairman and shall have the full powers of the chairman on matters that come before the Board during the absence of the chairman.

3. **A clerk** shall be appointed by the Town Administrator. The clerk shall maintain a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct by resolution.

4. All officers shall serve for one year and shall be eligible for re-election.

**MEMBERS AND ALTERNATES**

### Regular and Alternate Members

### 1. The number of Alternate members shall be appointed, as provided by the local legislative body in the Town Charter. Alternates should attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities.

### 2. At meetings of the ZBA, Alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chair to temporarily fill the unexpired term of a vacancy may participate with the Board in a limited capacity. During a public hearing, Alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters, and the public. Alternates shall not be allowed to make or second motions. Once the Board moves into deliberations after the public hearing is closed, Alternates shall refrain from participating in further discussions with the Board. During work sessions or other portions of meetings that do not include a public hearing, Alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chair shall fully inform the public of the status of any Alternate present and identify the members who shall be voting on the application.

### 3. Members and Alternates must reside in the community and are expected to attend every meeting of the Board to exercise their duties and responsibilities. Any member who is unable to attend a meeting or disqualified from participating in a particular case shall notify the Chair as soon as possible. Members, including the Chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

**MEETINGS**

1. **Regular meetings** shall be held on the call of the Chair and at such other times as the Board may determine, per RSA 673:10.

2. **Quorum.** A quorum for all meetings of the Board shall be three members, including Alternates sitting in place of members.

a. The Chair shall make every effort to ensure that all five members, and one or two Alternates, are present for the consideration of any appeal or application.

b. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chair shall designate one of the Alternate members to sit in place of the absent or disqualified member, and such Alternate shall be in all respects a full member of the Board while so sitting.

c. Alternates shall be activated on a rotating basis from those present at a particular meeting. When an Alternate is needed, the Chair shall select the Alternate who has not been activated for the longest time and, if there are two or more Alternates who meet that criteria, the Alternate who has served the longest shall be activated. If two or more Alternates still both meet that criteria, the selection shall be made by the flip of a coin.

d. If there are less than five members (including Alternates) present, the Chair shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present that shall not solely constitute grounds for a rehearing should the application fail.

e. If the applicant opts to postpone due to less than a full Board present, the Board shall announce the time, date, and location of the continued hearing. If the Board cannot determine the time, date, and location of the continued hearing, the Board shall provide new notice to all parties pursuant to RSA 676:7.

3. **Disqualification.** If any member finds it necessary to disqualify him/herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the Chair as soon as possible so that an Alternate may be requested to sit in his/her place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should step down (recuse themselves) Board members should review the questions which are asked of potential jurors to determine qualification (RSA 500- A:12). A potential juror may be asked whether he or she:

a. Expects to gain or lose upon the disposition of the case;

b. Is related to either party;

c. Has advised or assisted either party;

d. Has directly or indirectly given an opinion or formed an opinion;

e. Is employed by or employs any party in the case;

f. Is prejudiced to any degree regarding the case; or

g. Employs any of the counsel appearing in the case in any action then pending in the court.

Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall step down from the podium and sit in the audience and may participate in the hearing as an abutter or member of the public.

4. **Order of Business.** The order of business for regular meetings shall be as follows:

1. Call to order by the Chair

b. Pledge of Allegiance

c. Minutes of previous meetings

d. Regular Business/Public Hearings

e. New/Old business

f Communications and miscellaneous

g. Adjournment

(Note: Although this is the usual order of business, the Board may wish to hold the hearings immediately after the Pledge of Allegiance in order to accommodate the public.)

**APPLICATION/DECISION**

1. **Applications.**

a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the clerk of the Board of Adjustment who shall record the date of receipt over his signature.

Appeals from an administrative decision taken under RSA 676:5 shall be filed within 21 days of the decision.

At each meeting, the Clerk shall present to the Board all applications received by him/her at least 7 days before the date of the meeting.

b. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these Rules of Procedure.

2. **Public Notice.**

a. Public notice of public hearings on each application shall be given in a local newspaper and shall be posted at the Newmarket Town Hall and the Newmarket Post Office or Town of Newmarket websitenot less than five days (5) before the date fixed for the hearing. Notice shall include the name of the applicant, description of the property to include tax map identification, action desired by the applicant, provisions of the Zoning Ordinance concerned, the type of appeal being made and the date, time and place of the hearing.

b. Personal notice shall be made by certified mail to the applicant and all abutters not less than 5 days before the date of the hearing. Notice shall also be given to the Planning Board, Town Clerk and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.

c. Costs of all required notices must be paid for, in advance, by the applicant.

3. **Public Hearing.** The conduct of public hearing shall be governed by the following rules:

a. The Chair shall call the hearing in session

b. The Chair shall read the application and report on how public notice and personal notice was given.

c. Members and Alternates of the Board may ask questions at any point during testimony.

d. Each person who appears shall be required to state his/her name and address and indicate whether he/she is a party to the case or an agent or counsel of a party to the case.

e. Any member of the Board or Alternate, through the Chair, may request any party to the case to speak a second time.

f. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.

g. The applicant shall be called to present his/her appeal.

h. Those appearing in favor of the appeal shall be allowed to speak.

i. Those in opposition to the appeal shall be allowed to speak.

j. The applicant and those in favor shall be allowed to speak in rebuttal.

k. Those in opposition to the appeal shall be allowed to speak in rebuttal.

l. Any person who wants the Board to compel the attendance of a witness shall present his request in writing to the Chair not later than 3 days prior to the public hearing.

m. The Board of Adjustment will hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the Zoning Ordinance and state zoning law.

n. The Chair shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.

o. The hearing on the appeal shall be declared closed and the next case called up.

4. **Decisions.** The Board shall decide all cases within thirty (30) days of the close of the public hearing and shall approve, approve with conditions, deny the appeal. Notice of the decision will be made available for public inspection within 5 business days, as required by RSA 676:3, and will be sent to the applicant by certified mail. If the appeal is denied, the notice shall include the reasons therefore.

**5.** **Voting.** The Chairman may assign the task of drafting a motion to a Board member who shall bring a draft motion to the Board at the continuation of the deliberative portion of the meeting for the consideration of the Board. Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, theopposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.

The Newmarket Board of Adjustment (ZBA) has chosen to utilize the following method for voting on variances: to take a single vote on all five (5) criteria, with three affirmative votes required to approve the variance. Changes to this voting method, are effective 60 days after the date at which the ZBA decides to change the method and only apply to applications filed after the change.

6. **Reconsideration by the Board.** The Board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per 74 Cox Street LLC v. City of Nashua, September 21, 2007. Motions for Rehearing can only be received in the office of the Board during normal business hours. (See Cardinal Development v. Winchester, October 2008.)

7. **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 party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

**RECORDS**

1. The records of the Board shall be kept by the Clerk and made available for public inspection at the Zoning Office at the Newmarket Town Hall, in accordance with RSA 673:17.

2. Final written decisions will be placed on file and available for public inspection within 5 business days after the decision is made, in accordance with RSA 676:3.

3. Minutes of all meetings including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within 5 business daysof the public meeting. RSA 91-A:2, II.

**AMENDMENTS**

These Rules of Procedure shall be adopted or amended by a majority vote of the Zoning Board of Adjustment at a regular meeting of the Board provided that such new rules or amendments, are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the Town Clerk and be available for public inspection pursuant to RSA 676:1.

**WAIVERS**

Any portion of these Rules of Procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant and a waiver would not be contrary to the spirit and intent of the Rules.

**JOINT MEETINGS AND HEARINGS**

1. RSA 676:2 provides the Board of Adjustment may hold joint meetings or hearings with other "land use boards", including the Planning Board, and the Inspector of Buildings. Each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

2. Joint business meetings with any other land use board may be held at any time when called jointly by the Chair of the two boards.

3. A public hearing on any appeal to the Board of Adjustment will be held jointly with another board **only** under the following conditions:

a. The joint public hearing must be a formal public hearing on appeal to both boards regarding the same subject matter; and

b. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and

c. The provisions covering the conduct of public hearings, set forth in these Rules, together with such additional provisions as may be required by the other board, shall be followed; and

d. The other board shall concur in these conditions.