

**ZONING BOARD OF ADJUSTMENT  
TOWN OF MADISON  
PO BOX 248  
MADISON, NH 03849**

**RULES OF PROCEDURE**

**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 Madison.

**OFFICERS**

1. A **Chairman** shall be elected annually by a majority vote of the Zoning Board of Adjustment (ZBA) in the month of April. 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 in the month of April. The Vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters which come before the Board during the absence of the Chairman.
3. All officers shall serve for one (1) year and shall be eligible for re-election.

**ADMINISTRATIVE ASSISTANT**

1. An **Administrative Assistant** shall be appointed by a majority vote of the Board with the approval of the Board of Selectmen. The Administrative Assistant shall receive & process applications, prepare member packets, maintain a record of all meetings, transactions and decisions of the board, and perform such other duties as the Board may direct by resolution.

**MEMBERS AND ALTERNATES**

1. **Five regular members** shall be appointed by the Board of Selectmen, based on the recommendations of the Board of Adjustment Members. Up to **five alternate members** may be appointed in the same fashion. Alternate members 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. Members must reside in the community 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 Chairman or Administrative Assistant as soon as possible. Members, including the Chairman and all officers, and alternate members may participate in public hearings. Alternate members not raised to voting status may not participate in deliberations or the vote to grant or deny application appeals under consideration.

## MEETINGS

**1. Regular meetings** shall be held in the lower level meeting room of the Madison Town Hall, at **6:00 P.M.** on the third Wednesday of each month, when an application is to be heard. No new business will be opened after 9:00 P.M. and the meeting will conclude by 10:00 P.M. Other meetings may be held on the call of the Chairman provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.

**2. Quorum.** A quorum for all meetings of the Board shall be three members, including alternates sitting in place of members. The Board will make every effort to ensure that a full five-member Board is present for the consideration of any appeal. An applicant will be given the opportunity to continue an appeal until a full five-member Board is seated. If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chairman 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.

**3. Disqualification.** If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he shall notify the Chairman as soon as possible so that an alternate may be requested to sit in his 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.

Either the Chairman or the member disqualifying himself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall absent himself from the Board table during the public hearing and during all deliberation on the case.

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

- a. Call to order by the Chairman
- b. Roll call by the Administrative Assistant
- c. Continued applications
- d. New applications
- e. New business
- f. Approval of minutes
- g. Communications and miscellaneous
- h. Other business
- i. Adjournment

Chairman has the discretion to change the Order of Business

## SITE VISITS

1. Board members may visit an applicant's property which is the subject of an appeal to view the characteristics of the property prior to the hearing as follows:
  - a. The visit shall be authorized by the applicant on the appeal application.
  - b. The visit shall be during reasonable daylight hours.
  - c. Members shall identify themselves to the applicant whenever the applicant is available on site.
  - d. No more than two members may visit a property at the same time.
  - e. Members shall not discuss the appeal with the applicant or between each other

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Adopted 08/21/07

Madison Zoning Board of Adjustment  
Rules of Procedure

while at the site.

- f. Pictures may be taken by members during a site visit if authorized by the applicant on the appeal application. Pictures shall become a part of the official record.
2. The Board may request permission to schedule a noticed site visit as needed.
3. Refusal to grant permission for Board members to visit a property prior to the public hearing or to schedule a noticed site visit may be grounds for denial of the appeal. Refusal to grant permission for Board members to take photographs may result in a continuance of the appeal.

## **APPLICATION/DECISION**

### **1. Applications.**

- a. Each application for a hearing before the Board shall be made on forms provided by the Board; the Administrative Assistant shall record the date of receipt of the application over his or her signature. A completed application must be received by 12:00 Noon on the Tuesday, twenty-two (22) days before the regularly scheduled meeting to be placed on the agenda for the regularly scheduled meeting. Applicants submitting applications after that deadline shall be asked to sign a Hearing Waiver for the Board of Adjustment to waive the requirement to hold a public hearing within thirty days of receipt of an application and hold the application until the next regularly scheduled meeting. Appeals from an Administrative Decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision. A completed application shall include a properly executed application, including an Application Checklist Report, a certified plot plan with 2' (foot) contour intervals where deemed necessary, and all applicable non-refundable fees.

The Board shall make determination of application completeness, determination of regional impact status, and consider waivers prior to opening the public hearing for any appeal.

The Board may impose reasonable fees upon an applicant for the expense of consultant services or investigative studies, review of documents, and other such matters that may be required by a particular application per RSA 676:4.I (g).

- 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 the Conway Daily Sun and shall be posted at Madison Town Hall, upper and lower levels, the Madison Post Office, and the Silver Lake Post Office not less than five days (5) before the date fixed for the hearing. Notice shall include the name of the applicant, description of 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. Notice shall be made by certified mail to the applicant, agent if applicable, and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to Board of Selectmen, Code Enforcement Officer, the Planning Board,

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Madison Zoning Board of Adjustment  
Rules of Procedure

Town Clerk, and any other parties deemed by the Board to have special interest. Notice for all cases within the Village District of Eidelweiss shall be given to the Office of the Board of Commissioners of the Village District of Eidelweiss. Said Notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.

c. The applicant shall pay for all required notice costs in advance.

### **3. Rules of Behavior**

- a. Anyone intending to testify or speak to the Appeal before the Board at the public hearing will be sworn in as follows: “Do you swear to tell the truth, the whole truth, and nothing but the truth, under the penalty of perjury?” Anyone intending to speak to the Appeal will have to respond in the affirmative.
- b. Anyone in attendance at a meeting called to order by the Board is expected to conduct themselves in a civil manner, or be called out of order. The Chair shall determine if an individual is out of order and a first warning will be given. A second determination of conduct out of order will result in the individual being asked to leave the meeting room. If the individual refuses to leave, a member of the Board will remove the individual. The minutes will reflect action called out of order.

### **4. Public Hearing**

The conduct of public hearings shall be governed by the following rules:

- a. The Chairman shall call the hearing in session and ask for the Administrative Assistant’s report on the first case.
- b. The Administrative Assistant shall read the application, report on how public notice and personal notice was given, and list any correspondence relevant to the case.
- c. Each person who wishes to speak to the case will be sworn in by the Chairman and shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
- d. The Chairman shall declare the public hearing open. The applicant shall be called to present his appeal.
- e. After a five minute presentation by the applicant, members of the Board may ask questions at any point during the remainder of the testimony.
- f. Any member of the Board, through the Chairman, may request any party to the case to speak a second time.
- g. Any party to the case who wants to ask a question of another party to the case must do so through the Chairman.
- h. Those appearing in favor of the appeal shall be allowed to speak.
- i. Those appearing 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 Chairman 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

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Madison Zoning Board of Adjustment  
Rules of Procedure

facts of the case or how the facts relate to the provisions of the Zoning Ordinance and State zoning law.

- n. The Chairman 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 Chairman shall declare the public hearing closed, unless a request is made by the applicant to continue the hearing. The Board shall review and deliberate the information provided.
- p. The Board shall vote on the case. If only four voting members are present, a tie vote will be considered a denial of the appeal. The Chair may vote to break a tie. In accordance with NH RSA 674:33.III, 3 concurring votes shall be required to approve an appeal.

**5. Decisions.** The Board shall decide all cases within thirty (30) days of the close of the public hearing and shall either grant, grant with conditions, or deny the appeal. Notice of Decisions will be made available for public inspection within five business days, as required by RSA 676:3, and will be sent to the applicant by mail. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the Planning Board, the Board of Selectmen, Town Clerk, Assessor, VDOE, if in Eidelweiss and other town officials as determined by the Board. Notice shall be posted at Madison Town Hall, upper and lower levels.

**6. Appeals.** A Motion for Rehearing shall be filed within thirty (30) days of a decision by the Zoning Board. This motion can be filed electronically and followed with an original mailed. This thirty-day period shall be counted in calendar days beginning with the date following the day upon which the Board voted to grant or deny the application.<sup>1</sup> (RSA 677-2) An appeal of a Motion for Rehearing shall be filed with Superior Court within thirty (30) days of the date of denial. Service of a petition to Superior Court appealing a Motion for Rehearing shall be to the Town Clerk. (RSA 677:4).

## RECORDS

- 1. The records of the Board shall be kept by the Administrative Assistant and made available for public inspection at Madison Town Hall in accordance with RSA 673:17.
- 2. Final written decisions will be placed on file and available for public inspection within five business days after the decision is made. RSA 676:3.
- 3. Minutes of all meetings shall be in accordance with the Town of Madison Municipal Records Committee, Policy #2, 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 five business days of the public meeting. RSA 91-A:2 II.

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<sup>1</sup> *In the event the 30<sup>th</sup> day is a non-business day, the filing date defaults to the next business day.*

## **AMENDMENTS**

These Rules of Procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken.

## **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 waiver would not be contrary to the spirit and intent of the rules or specific circumstances relative to the appeal indicate that the waiver will properly carry out the spirit and intent of the regulations.

## **JOINT MEETINGS AND HEARINGS**

- 1.** RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other land use boards, including the Planning Board, the Historic District Commission, the Building Code Board of Appeals, and the Code Enforcement Officer, and that 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 Chairs 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 appeals 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 Chairman shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chairman 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.