

Town of Lyndeborough

Zoning Board of Adjustment

Rules of Procedure

1. Authority

These rules of procedure are adopted pursuant to [New Hampshire Revised Statutes Annotated \(RSA\) 676:1](#).

The Zoning Board is also governed by the [New Hampshire Revised Statutes Annotated](#) (especially [Title LXIV, Planning and Zoning](#)) and by the [Lyndeborough Zoning Ordinance](#). In the event of a conflict, state law takes precedence over the Lyndeborough Zoning Ordinance, which takes precedence over these Rules of Procedure.

2. Membership

Appointment

The Zoning Board has five regular members and up to five alternate members, appointed by the Zoning Board in accordance with [RSA 673:3](#), [673:5](#), and [673:6](#), which require that all regular and alternate members be residents of the town of Lyndeborough and be appointed for staggered three year terms.

Regular and Alternate Members

Regular members 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. Alternate members are encouraged to attend all meetings to familiarize themselves with the workings of the board and to stand ready to serve whenever regular members of the board are unable to fulfill their responsibilities.

Participation

All regular and alternate members who are present at a meeting of the Board will sit on the Board and participate in the hearing and discussion of all matters to come before the Board, unless disqualified from participation in accordance with [RSA 673:14](#).

All regular and alternate members sitting on the Board will be entitled to vote on procedural business of the Board, such as the adoption of rules and the election of officers.

All regular members sitting on the board will act as voting members when considering an appeal to the Board. Prior to the hearing of an appeal, the Chair will designate alternate members to act as voting members in the place of any regular members who may be absent or disqualified.

The Board members who participate as voting members in the initial public hearing on an appeal will, when available, participate as voting members in all subsequent hearings, deliberations, and decisions pertaining to that appeal.

Disqualification

If any members find it necessary to rescue themselves from sitting in a particular case, as provided in RSA 673:14 as it may be amended from time to time, they shall notify the Chair as soon as possible so that an alternate may be requested to sit in their places.

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.

The disqualification shall be announced by either the Chair or the disqualified member before the beginning of the public hearing on the case. The disqualified member shall absent himself or herself from the Board table during the public hearing and during all deliberation on the case.

3. Officers

Chair

A Chair shall be elected annually by a majority vote of the Board at the first meeting after Town Meeting. The Chair must be a regular member of the Board, and shall:

- a. preside over meetings and hearings of the Board
- b. appoint such committees as directed by the Board
- c. affix his or her signature in the name of the Board
- d. be responsible for administrative matters concerning the Board

Vice-Chair

A vice-chair shall be elected annually by a majority vote of the Board at the first meeting after Town Meeting. Vice-Chairs must be regular members of the Board and shall exercise all powers and responsibilities of the Chair in the event of the absence, incapacity, or disqualification of the Chair.

4. Meetings

Schedule

Regular meetings of the Board shall be held at 7:00 pm on the second Monday of every month at Citizens' Hall, or in some alternative location chosen by the chair. The chair may cancel any regular meeting if no appeals have been submitted to the Board prior to the application deadline for that meeting, and if there is no other business that needs to be

conducted by the Board. The Chair may change the date of a regular meeting after informal consultation with the members of the Board.

Other meetings may be held at the call of the Chair or by resolution of the Board.

Quorum

A quorum for all meetings of the Board shall be three members, including alternate members sitting in place of regular members.

Order of Business

The order of business for regular meetings of the Board shall be as follows:

- a. Call to order by the Chair
- b. Roll call of Board members and alternates
- c. Public hearings continued from previous meetings
- d. Public hearings on new appeals
- e. Other business continued from previous meetings
- f. Other new business
- g. Minutes of previous meetings
- h. Communications and miscellaneous
- i. Adjournment

Notice

Public notice for meetings of the Board shall be governed by [RSA 91-A:2](#).

Conduct of Meetings

The Board Chair shall preside over all meetings of the Board. In the absence of the Chair, the vice-Chair shall preside. If both the Chair and the vice-Chair are absent, the members of the Board shall choose an acting Chair at the beginning of the meeting.

Time Limit

The Board will not begin considering a new matter after 9:00 pm and will conclude the meeting no later than 10:00 pm. When the Board adjourns a meeting without having concluded all scheduled business, it may choose to hold a special meeting to deal with the remaining business from the meeting, or continue to the next regularly scheduled meeting.

The Board may decide to modify these time limits for a meeting by majority vote at the beginning of the meeting, or by unanimous vote at any other time during the meeting.

5. Appeals to the Board

Application

All appeals to the Board concerning matters within its jurisdiction shall be filed in the Lyndeborough Town Offices on application forms provided by the Board. No appeal shall be considered to have been properly filed unless the appropriate forms have been completed, and are accompanied by the list of abutters required by [RSA 676:7](#) and any required application and abutter notification fees have been paid to the Town of Lyndeborough. An incomplete application will not be scheduled for a hearing.

Appeals from an administrative decision taken under [RSA 676:5](#) shall be filed within 40 days of the decision.

All application forms, application fees, and abutter notification fees shall be adopted by resolution of the Board and shall become part of these rules of procedure.

Scheduling of Hearing

An appeal to the Board will be scheduled for a hearing at the next regular meeting of the Board which is at least 21 days after the date on which the appeal has been properly filed. If the application is received less than 21-days before a regularly scheduled meeting of the Board, then the application will be scheduled for the subsequent meeting of the Board.

Public Notice

Public notice of hearings on each appeal shall be given according to the requirements of [RSA 676:7](#), by posting at Citizens' Hall and the Lyndeborough Post Office, and as otherwise required by statute.

Personal notice shall be mailed by certified mail to the applicant and to all abutters, according to the list provided by the applicant, not less than five days before the hearing. Town staff shall provide copies of the Hearing Notice & Agenda to the Lyndeborough Board of Selectmen, Planning Board, Building Inspector, and any other town official or board deemed by the Chair to have special interest.

Public Hearing

The hearing on an appeal to the Board shall have the following format, except where the Board chooses to vary it:

- a. The Chair shall introduce the case.
- b. If fewer than five voting Board members are available for the hearing, the applicant shall be offered the opportunity to continue the case to the next meeting of the Board. If the applicant chooses to proceed with less than five voting members, then that shall not be grounds for granting a request for a rehearing.
- c. The applicant shall explain what relief is being sought and why he or she believes that such relief is merited.

- d. Abutters and other directly affected parties in favor of the appeal shall be allowed to speak.
- e. Abutters and other directly affected parties in opposition to the appeal shall be allowed to speak.
- f. The applicant and other directly affected parties in favor of the appeal shall be allowed to speak in rebuttal.
- g. Abutters and other directly affected parties in opposition to the appeal shall be allowed to speak in rebuttal.
- h. The Board will hear with interest any evidence that pertains to the facts of the case and any arguments relating to the applicability of the Zoning Ordinance and state zoning law to the case.
- i. The Board will close the public hearing and may choose to deliberate on the case either immediately, later in the same meeting, or at a future meeting. When the Board chooses to deliberate on the case immediately, it may also retain the option of reopening the public hearing during its deliberations to ask additional questions of the parties. The following general rules apply to the hearing:
 - Any person who wishes to speak must provide his or her name, address, and relation to the case (as an applicant, abutter, person otherwise affected by the application, interested member of the public, or agent or counsel of a party).
 - Members of the Board may ask questions at any time during or after the testimony of any person.
 - Any member of the Board may, through the Chair, ask any person to speak a second time.
 - Any party to the case may, through the Chair, ask questions of another party following that party's testimony.
 - Parties to the case shall not address one another directly but may ask questions of another party through the Chair.
 - The Board may vote at any time to continue a public hearing to a future meeting or to a later time at the same meeting.

Burden of Proof

The applicant shall have the burden of proving any historical facts relevant to an appeal before the Board. Such relevant historical facts include, but are not limited to, the date on which a lot, structure, or use came into existence.

Proof that a lot existed as a Lot of Record ([Zoning Ordinance Section 1302.00](#)) on a particular date may require signed certification to that effect by an attorney or licensed land surveyor, accompanied by copies of the deed or deeds from the Hillsborough County Registry of Deeds that support that conclusion.

The existence of a structure or use on a particular date may be established by testimony or by documentary evidence.

Applicant's Failure to Appear

If the applicant fails to appear at a scheduled hearing without informing the Zoning Board Chair in advance, the application will be deemed to have been withdrawn without prejudice. The applicant may resubmit the original application but must repay all application and abutter fees.

Decisions

The Board shall decide all cases within ninety (90) days of the conclusion of the public hearing. The Town shall provide written notice of its decision to the applicant within five (5) business days. The Chair shall draft the notice of decision with the assistance of town staff as may be required.

The decision of the Board may be to approve the appeal, to approve the appeal with conditions or limitations, or to deny the appeal. Any decision of the Board shall require the passage of a motion for that decision. The failure of a motion for a particular decision is not equivalent to the passage of a motion for any alternative decision.

Votes on a motion for a decision shall be by roll call of the members of the Board. Passage of a motion to approve an appeal requires three votes in favor, regardless of the number of Board members voting on the motion. Passage of a motion to deny an appeal requires a majority of voting Board members.

Findings of fact and reasons for a decision shall be incorporated in the motion for decision, or the Board may choose to hold separate deliberations, either later in the same meeting or in a subsequent meeting, to adopt findings of fact or a statement of the reasons for the decision.

The Board may optionally choose to hold separate deliberations on the precise language of the notice of decision later in the same meeting or in a subsequent meeting.

A decision of the Board shall not be final for purposes of starting the appeal period until the Board has concluded all deliberations relating to that decision.

6. Rehearing

A request for a rehearing of any decision of the board must be made within 30 days of the decision and shall be governed by the applicable sections of New Hampshire Revised Statutes Annotated (RSA) Chapter 677 as it may be amended from time to time.

7. Records

The records of the Board shall be kept by the town's Administrative Assistant or other town staff as may be assigned by the Board of Selectmen and shall be available for public inspection in the Lyndeborough Town Offices during regular Town Office Hours, in accordance with [RSA 673:17](#).

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

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 five (5) business days of the public meeting, in accordance with [RSA 91-A:2](#).

The Board may employ a secretary to take meeting minutes and undertake any other clerical duties that may be assigned by the Chair and Board of Selectmen.

The Board may authorize the placement of any documents, records or other materials related to the business of the Board on a web site, with the clear understanding that materials on the web are not authoritative or definitive, and all materials placed on such a web site shall be marked with a disclaimer to that effect.

8. Joint Meetings and Hearings

RSA 676:2 as it may be amended from time to time provides that the Board of Adjustment may hold joint meetings or hearings with other “land use boards,” including but not limited to the Planning Board and the Conservation Commission and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

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.

9. Amendments

These rules of procedure may be amended by a majority vote of the Board at a regular meeting, provided that the proposed amendments must have been presented to the Board at the regular meeting preceding the meeting at which the vote is taken.

Adopted June 3, 2024