

June 2019

Rules of Procedure

**ZONING BOARD OF ADJUSTMENT
DANVILLE, NEW HAMPSHIRE**

I. AUTHORITY

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

II. OFFICERS

1. A **Chair** shall be elected annually by a majority vote of the Zoning Board of Adjustment (Board) in the month of May. The Chair 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-Chair** shall be elected annually by a majority vote of the Board in the month of May. The Vice-Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.
3. All officers shall serve for one (1) year and shall be eligible for re-election.
4. A **Clerk** shall be recommended by the Chair to the Board and, with the approval by vote of the Board, hired to perform clerical and administrative support duties in support of the Board's activities. The Clerk shall maintain a record of all meetings, transactions and decisions of the Board.
5. Up to **five (5) Alternate Members** shall be appointed by the Selectmen to serve whenever a regular Member of the Board is unable to fulfill his/her responsibilities. Alternates are encouraged to attend all meetings and participate with the board during public hearings. Only alternates designated as voting members for a specific hearing can participate in deliberation and voting.
6. In the event that neither the Chair or the Vice-Chair can serve, the members and alternates shall elect someone to be the Chair pro-tem and that person shall carry the full power including arranging for legal counsel to the conclusion of the case, including any continuation.

III. MEETINGS/HEARINGS

1. **Regular Meetings.** A regular meeting shall be held at the Danville Town Hall at 7:30 pm on the first Tuesday of the month of May or any other Tuesday in May as agreed upon

by the Chair and a majority vote of the members. Other meetings may be held on call of the Chair, provided postings of the notice at the Town Hall and notice to each Member by e-mail or telephone is given at least twenty-four hours, prior to such meetings.

2. **Quorum.** A quorum for all meetings and hearings of the Board shall be three (3) members, including Alternates sitting in the place of members. However, in the case of a hearing, if there is not a full Board, even with alternates serving, the Chair shall give the applicant the option of postponing the hearing until a full five-person Board is present. If the applicant chooses to proceed with the hearing, she/he will be advised that a hearing before a three (3) or four (4) Member Board will not be grounds for a rehearing in the event the applicant is denied. In all cases, per RSA 674:33, a minimum of three “yes” votes are required to grant or approve any matter legally before the Board.

If any Board member is absent from any meeting or hearing, or disqualifies him/herself from sitting on a particular case, the Chair shall designate an Alternate member to sit in the place of the absent or disqualified Member, and such Alternate shall be in all respects a full Member while so sitting. In selecting an Alternate, the Chair shall first consider which Alternates are present, then he/she shall select an Alternate on a rotational basis to ensure all alternates get an equal chance to serve.

3. **Disqualification.** If any member finds it necessary to be disqualified from sitting in a particular case, as provided in RSA 673:14, that person 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 shall be disqualified to act on a particular application, that Member or another Member on the Board may request the Board to vote on the question of disqualification. Any request shall be made before the public hearing gets underway. The Board shall then vote on the question of whether that member should be disqualified. The vote shall be advisory and non-binding.
4. The disqualification shall be announced by either the Chair or the disqualifying Member before the beginning of the public hearing on the case. The disqualified Member shall absent him/herself from the Board table during the public hearing and during all deliberation on the case.
5. **Order of Business.** The order of business for regular meetings shall be as follows:
 - a. Roll call by the Clerk
 - b. Approving minutes of previous meeting
 - c. Unfinished business
 - d. Public Hearing. In order to accommodate the public, the Chair may place this item anywhere in the order after the roll call.
 - e. New business
 - f. Communications and miscellaneous business
 - g. Adjournment
6. **Public Hearing.** The conduct of the public hearings shall be governed by the following rules:

- a. The Chair shall call the meeting to order and call for the Clerk's report on the first case
 - b. The Clerk shall read the application and report on the manner in which public notice and personal notice were given.
 - c. The Applicant shall be called to present their appeal and those appearing in favor of the appeal shall be allowed to speak.
 - d. Those in opposition to the appeal shall be allowed to speak.
 - e. The applicant and those in favor shall be allowed to speak in rebuttal.
 - f. Those in opposition to the appeal shall be allowed to speak in rebuttal.
 - g. The Chair shall present a summary setting forth the facts of the case and the claims made for each side.
 - h. The hearing on the appeal shall be declared closed and the next case called up.
 - i. Members of the Board may ask questions at any point during testimony.
 - j. Any Member of the Board, through the Chair, may request any party in the case to reappear.
 - k. Each person who appears shall be required to state their name and address and indicate whether they are a party to the case, an agent, or counsel of a party to the case.
 - l. Any party to the case who desires to ask a question of another party to the case must do so through the Chair.
 - m. Any person who desires the Board to compel the attendance of a witness shall present their request, in writing, to the Chair not later than ten (10) days prior to the public hearing. When the time between public notice and the hearing is less than fourteen (14) days, such written request will be considered timely if received by the Chair prior to the elapse of one half of the numbers of days between the public notice and the hearing.
 - n. Any tape (audio or video) made by the Board relative to a Variance, Special Exception or Administrative Decision shall be kept on file for ninety (90) days after the date of the decision.
7. **Continuances.** For various reasons, the Board may choose to continue a hearing or be requested by someone of standing to continue a hearing. A majority vote of the voting Board members for the case is required to continue the hearing. If a date is chosen for the continuance during the hearing, no additional notice is required to be sent to the abutters. If a date is not chosen for the continuance, an additional notice will need to be sent to the abutters once a date is determined.

If the continued hearing is held on the scheduled or noticed date and the applicant does not appear or send a representative, the Board can proceed with the hearing and deliberation or motion and vote on a new continuance date.

If the Board votes to continue a hearing, but a date is not chosen during the hearing, the applicant and Board has up to six (6) months to schedule the hearing with the appropriate notices. If after six (6) months, a continuance date has not been set or the applicant has not communicated status to the clerk, the Board can choose to make a decision based on the information provided to date.

IV. COMMUNICATION

1. **Purpose.** The purposes of this section are:

- a. To ensure compliance with the letter and spirit of the Right-to-Know Law, RSA 91-A, and with the Due Process rights of parties before the Board;
- b. To clarify a Board members' ability, between meetings, to research issues and prepare motions or other potential Board actions, thus promoting efficient use of meeting time, but only to the extent allowed by law; and
- c. To clarify the role of electronic media such as E-mail in achieving these goals, consistent with the statute.

2. **Definitions:**

- a. "Communication" means a transfer of information, objective or subjective, from one person to another. It includes face-to-face or phone conversations, letters, memos, E-mails, web sites, or any other medium, regardless of the location or ownership of any device or equipment used.
- b. Any between-meeting communication involving more than one Board member shall be considered either a "Distribution" or an "Exchange."
- c. A "Distribution" is a one-way communication, where no between-meeting response (except acknowledgment of receipt) occurs or is expected.
- d. An "Exchange" is a between-meeting communication, or series of them, which involves a between-meeting response, or expectation of response.
- e. "Ex Parte communication" is communication, other than at a legally-noticed meeting, between a Board member and a person with an interest in, or affected by, a pending or future case, or other matter within the Board's jurisdiction.

3. **Between-Meeting Activities of Individual Members.** Individual Board members may, between meetings, prepare drafts of motions or other potential Board actions. They may also research or investigate general or specific factual issues. However, if the research pertains to a case, the member shall, at the next public hearing, report all findings to the Board, and parties to the case shall be given a meaningful opportunity to respond.

4. **Distributions.** A Distribution may be made to any number of Board members, so long as it does not become an Exchange. Whenever a member makes a Distribution concerning a pending or future case, and it involves a quorum of the Board (counting all senders and recipients):

- a. A copy shall be forwarded to the Board clerk, who shall determine, under RSA 91-A or other applicable law, whether the Distribution is subject to public disclosure, and shall place the copy in the appropriate file;
- b. Unless the information is exempt from disclosure under RSA 91-A, the member making the Distribution shall report on it, and its contents, at the public hearing on the case; and

- c. Parties to the case shall be given a meaningful opportunity to respond to the information in the Distribution.
5. **Exchanges.** Exchanges involving a quorum or more of the Board, or of any subcommittee as defined below, are prohibited. Such Exchanges shall be considered deliberations, and shall occur only at public meetings noticed in accordance with RSA 91-A. An Exchange pertaining to any activity allowed under paragraph IV.3 is permitted if the number of Board or subcommittee members involved is less than a quorum; however:
 - a. Each member involved shall be responsible for preventing the number of members involved from reaching a quorum;
 - b. Information discussed in or generated by an Exchange shall not be subject to further Distribution; and
 - c. No Exchange shall include any vote or straw vote, or any Ex Parte communication.
6. **Ex Parte Communications.** Board members shall not initiate Ex Parte communications. If an Ex Parte communication is initiated by another person, the Board member contacted shall:
 - a. Refrain from discussing the substance or merits of a case;
 - b. Inform the person, if necessary, that such a discussion could lead to disqualification;
 - c. Refer the person to the Board Clerk or to a Board meeting, as appropriate; and
 - d. Report on the conversation to the Board at a public meeting.
7. **Scheduling and Agenda.** Notwithstanding paragraphs IV.4, 5, and 6, nothing in this policy prevents any Distributions, Exchanges or Ex Parte communications which pertain solely to:
 - a. Scheduling of meetings or hearings;
 - b. The determination or ordering of agenda items or topics to be taken up at meetings or hearings; or
 - c. General procedural requirements pertaining to such scheduling and agenda matters.
8. **Subcommittees.** A subcommittee is any group of two or more persons, including at least one Board member, to which the Board has assigned a specific task related to Board business. A subcommittee shall be considered a public body, and all provisions of RSA 91-A and this policy, applicable to a quorum of the Board, shall also apply to a quorum of a subcommittee.
9. **E-Mail Specific policies.**
 - a. In an effort to ensure that all Board business is conducted within an appropriate forum, open to the public, the Board does not have an official e-mail address. All external communication should be through the Clerk, Chair or Vice-Chair.

- b. Board members may choose to provide personal e-mail addresses for the sole purposes of receiving meeting reminders, receiving draft meeting minutes, and receiving meeting agendas. These items may be mailed by regular mail to any Board member who does not have an e-mail address or who chooses not to provide a personal e-mail address. Personal e-mail addresses of Board members shall not be disseminated to anyone other than Board members, the board's clerk
- c. The Chair, the Vice-Chair, or the Board clerk may send draft meeting minutes to Board members. No comments, reactions or changes shall be sent to the clerk or other board members regarding draft meeting minutes via e-mail. Draft minutes shall be reviewed and discussed only at the next public meeting.
- d. The Chair, the Vice-Chair or the Board's clerk may submit approved meeting minutes for posting on the official website for the Town of Danville.
- e. The Chair, the Vice-Chair or the Board's clerk may send meeting reminder notices and meeting agendas to Board members via e-mail. Board members may respond via e-mail only with requests for additional agenda items or their inability to attend a scheduled meeting.
- f. Should the Chair receive an e-mail inquiry that requires action or the furnishing of information before the next regular meeting of the Board, the Chair may act, respond, or reply, providing such reply is limited to the subject referenced in the e-mail. Such action, response, or reply shall be reported to the Board members at the next regularly scheduled meeting and reference thereto shall be incorporated into that meeting's minutes.
- g. The Chair may forward to Board members, by e-mail, notices, publications, correspondence and other documents the Chair receives from any local, federal, state, regional, or private agencies or consultants which the Chair, in his or her discretion, determines would be informative for the Board members to receive. No comments, reactions or changes shall be sent by e-mail to the clerk or other Board members regarding such information, but any member may bring the information up for discussion at a future meeting of the Board.
- h. Any Board member who feels unduly influenced by correspondence received from a resident(s), other member(s) of any town board, Board or committee, or any other person, related to the business of the Board, shall immediately advise the Chair.

10. Personal Social Networking and Postings by Members

- a. Board members shall:
 - i. Refrain from publishing information about the Zoning Board of Adjustment or its activities without the approval of a majority of the Board members as set forth above.

- ii. Abide by the Code of Conduct adopted by the town of Danville and set forth in these Rules of Procedure.
 - iii. Not divulge on social media any privileged or confidential information concerning any matter or issue that is or has come before the Board.
 - iv. Avoid social media postings that can be construed or interpreted as bias concerning any matter or issue which the Board is or has been involved.
 - v. Avoid publishing defamatory statements, postings that include discriminatory remarks, harassment, and threats of violence or which are otherwise inappropriate or unlawful, or release confidential resident information, over the Internet in order to protect the Board and the Town from liability.
 - vi. Be mindful of the responsibility to the Town of Danville and its residents pursuant to, and with respect for, his or her oath of office and duties as a member of the Board and representative of the Town.
- b. A Board member who decides to post complaints or criticism should avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene, threatening, or intimidating, that disparage residents, vendors, employees, or that might constitute harassment.
 - c. Should a Board member reference the Town in any way, the member must state that the views, opinions, ideas or information are his or her own and are not in any way attributable to the Town.

V. APPLICATIONS/DECISIONS

1. Applications

- a. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented at the Town Hall to either the Clerk of the Board of Adjustment or to the Town Clerk who shall record the date of receipt over their signature. The Chair of the Board of Adjustment shall be immediately notified in order to review the application and set a date for the hearing. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision. An appeal from a Planning Board decision must be filed with 30 days of conditional approval or final approval for cases where conditional approval was not given. Appeals of impact fees must be filed within 30 days of building permit issuance.
- b. The application, where appropriate, shall be accompanied by a comprehensive plot plan or by specific citation of such plan if it is already on file within the Town offices. The Board may act provisionally on lesser information when it deems the public interest will be served.
- c. Applications shall be scheduled for a hearing to be conducted within thirty (30) days of receipt by the Board.

- d. The following fees will apply to all applications to the Board of Adjustment and shall be payable by the person making the appeal prior to the hearing:

Mailing.....	\$6.00 per abutter
Application fee (including posting).....	\$150.00

The same fees shall apply to re-hearings.

- e. All forms and revision 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 hearings on each application shall be given in a paper of local circulation and shall be posted at the Town Hall not less than five (5) days before the date fixed for the hearing. Such notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provision 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 to the applicant's property. Abutters, for purposes described here, shall mean owners of record of property adjacent to and within two hundred feet (200') of the area affected, including those having frontage in common with the applicant along a public or private way, and any others determined to be materially affected by this action (see also RSA 672:3). 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 but need not be by certified mail.

- 3. **Decision.** The Board shall decide all cases within thirty (30) days of the date of the hearing. The Board will approve, approve with conditions, deny the appeal or defer its decision. Notification of the decision shall be made on a form provided by the Board which shall be sent to the applicant, all persons notified of the public hearing, the Selectmen and, when applicable, to the Building Inspector and the Planning Board. If the appeal is denied or deferred, the notice shall include the reasons therefore.
- 4. **Records.** Per RSA 676:3 II, whenever the Board votes to approve or disapprove an application or deny a motion for rehearing, the minutes of the meeting at which such a vote is taken, including the written decision containing the reasons therefore, shall be placed on file at the Danville Town Hall and shall be made available for public inspection within five business days of such vote.

VI. LEGAL ADVICE

The ZBA is an independent quasi-judicial board. The applications and hearings can raise various questions that require legal advice. All legal advice requests require a quorum of ZBA members

to vote on the questions to ask. The questions should be submitted to legal counsel by the acting Chair. All legal advice received from legal counsel shall be distributed to all non-recused ZBA members and alternates for the specific case. Legal advice is subject to attorney/client privilege and should not be made public or distributed unless voted on by the ZBA members. It is the responsibility of each ZBA member to treat each attorney/client privileged document as confidential and stored appropriately and destroyed after use. Town counsel shall be used for legal advice unless town counsel cites a conflict of interest. In such cases, ZBA can seek alternate legal counsel but must inform the Board of Selectmen.

VII. WAIVER

Any portion of these rules of procedure under the jurisdiction of the ZBA, 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. The Board may, upon motion made by any Board member, and by majority vote unless otherwise provided, waive compliance with any provisions of these Rules.

VIII. CODE OF CONDUCT

While the ZBA members and alternates are appointed volunteers and not employees of the town, their conduct and communication to other boards, town employees, town citizens, applicants and applicant representatives should be consistent with the Town of Danville Code of Conduct and harassment policies.

IX. AMENDMENTS

These rules of procedure may be amended by a majority vote of the members of the Board provided that such amendments are read at one meeting immediately preceding the meeting at which the vote is to be taken.

These amended rules of procedure are hereby approved by the Danville, NH Zoning Board of Adjustment.

DATE: July 2, 2019

CHAIR *Philip Hoff*
Jan Russo
Bob [unclear]
John [unclear]
Walter F Baird