

Town of Hudson, New Hampshire Bylaws
Zoning Board of Adjustment
Amended 07-28-22

Chapter 143

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§ 143-1. History. [Amended 07-28-2022]

- A. 12-14-1978: Adopted by the Zoning Board of Adjustment of the Town of Hudson
- B. 06-23-1988: Amended in its entirety,
- C. 06-23-2011: Amended again in its entirety.
- D. Subsequent amendments noted where applicable.
- E. 10-12-17: Amended in entirety.
- F. 04-11-19: Subsequent amendments noted where applicable.
- G. 09-26-19: Added Recorder; revised Clerk; unexcused absences; order of business: pledge of allegiance, introduction and 11:00 pm curfew; thirty-day re-hearing note and attachment “A”.
- H. 01-28-21: Added §143-5.2 on vacancy & succession of officers.
- I. 07-28-22: Global revision of gender terms to gender neutral terms throughout document; Added §143-3.B gender neutral inclusion statement; Amended §143-5.C Clerk, preferably Alternate member, elected annually and use Appendix “B” Clerk Duties; Deleted §143-5.C Clerk...“read cases into the record” (Zoning Administrator reads case into record); Amended §143-6.E “and Zoning Administrator” notify regarding member absences; Amended §143-7.D(2) on Alternate status as full Board member for continued/deferred cases; Amended §143-7.E by adding “Recusals”; Amended §143-7.E(2)(g) striking “then” and adding “currently”; Added §143-7.E(2)(h) direct or indirect abutter as disqualification; Amended §143-7.E(3) striking “shall” and adding “may”; Added §143-7.F. (4)(a), (5), (7)(a), (7)(b) pertaining to Order of Business; Amended §143-8.A(2) Appeal from Administrative Decision filed within “35” days; Amended §143-8.B(2) by adding “The applicant shall pay for all required notice costs...” previously shown as §143-8.B(3); Added §143-8.B(3) Property/Site location Notification Sign of Public Hearing; Amended 143-8.C(1) strike “Clerk” amend to “Zoning Administrator” to report on the first case; Deleted §143-8.C(12) regarding Finding of Facts form in Appendix C; Amended §143-9.E by adding “per RSA 677:2”; Amended §143-11 to “RSA 677:3”

§ 143-2. Authority.

These bylaws of the Hudson Zoning Board of Adjustment, hereinafter referenced simply as the Board, are adopted under the Authority of NH-RSA (New Hampshire Revised Statutes Annotated) 676:I. In the event of a difference between these bylaws and the applicable NH-RSAs, the NH-RSAs take precedence over these bylaws.

§ 143-3. Purpose.

- A. The purpose of these bylaws is to ensure an orderly procedure in the execution of the duties of the Board.
- B. For purposes of this document all terms are not intended to exclude any genders.
[Added 07-28-2022]

§ 143-4. Amendments.

These bylaws may be amended by a majority vote of the voting members at a regular meeting of the Board, provided such amendments are read at two successive public meetings.

§ 143-5. Officers.

- A. A Chairperson shall be elected annually by a majority vote of the Board at the first meeting in the month of January. The Chairperson 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.

- B. A Vice-Chairperson shall be elected annually by a majority vote of the Board at the first meeting in the month of January. The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters, which come before the Board during the absence of the Chairperson.
- C. A Clerk shall be elected annually by a majority vote of the Board at the first meeting in the month of January, preferably an Alternate member. The Clerk shall take attendance, process the member decision sheets for a summary of decision made and use Appendix B as a guide. **[Amended 9-26-2019; 07-28-2022]**
- D. All officers shall serve for one year and shall be eligible for re-election.

§ 143-5.1. Recorder. [Added 9-26-2019]

The Recorder is not a Member or Alternate. The Recorder shall transcribe the minutes and notices of decisions in accordance with State RSA requirements. The Recorder shall have minutes available for members to accept. The Recorder shall have notice of decisions available for the Chairperson and Zoning Administrator.

§ 143-5.2. Vacancy and succession of officers. [Added 1-28-2021]

- A. In the event that the unexpired term of Chairperson becomes vacant, the Vice-Chairperson will fill the vacancy until the first meeting in January of the following year, at which time the voting members will elect a new Chairperson.
- B. In the event that the unexpired term of Vice-Chairperson becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.
- C. In the event that the unexpired term of Clerk becomes vacant, the voting members will vote to fill the vacancy at their next regular scheduled meeting.

§ 143-6. Members and Alternates.

- A. Five (5) regular members shall be appointed by the Selectboard, attend all meetings, and sit as voting members.
- B. Five (5) alternate members shall be appointed by the Selectboard, attend all meetings to familiarize themselves with the workings of the Board and stand ready to serve whenever a regular member of the Board is unable to fulfill their responsibilities.
- C. A Selectboard Liaison may be appointed by the Selectboard to act as a liaison between the two Boards and should attend all meetings but shall have no voting powers nor the ability to sit in place of any regular member not in attendance.
- D. At meetings of the Board, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chairperson 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, alternates shall remove themselves from any further deliberations with the Board. During work sessions or 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 Chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

- E. All members and alternates 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 Chairperson and Zoning Administrator as soon as possible. Members, including the Chairperson and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration. Three (3) consecutive unexcused absences by a member or alternate shall be reported to the Selectboard through the Town Administrator, to take appropriate action. **[Amended 9-26-2019, 07-28-2022]**

§ 143-7. Meetings.

- A. Regular meetings (for appeals and Hearings) shall be held at Hudson Town Hall, at 7:00 p.m. on the fourth Thursday of each month in accordance with RSA 676:5 through 676:7 and RSA 91-A:2. The Chairperson may schedule additional overflow meetings, or reschedule meetings after consultation with the Zoning Administrator (or designee).
- B. Other meetings may be held on the call of the Chairperson, or a majority vote of the Board in accordance with RSA 91-A: 2II.
- C. All Board members shall be given notice of meetings by mail or email one week prior to the meeting date.
- D. Quorum. A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
- (1) The Chairperson 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.
 - (2) If any regular Board member is absent from any meeting or hearing, or disqualifies themselves from sitting on a particular case, the Chairperson 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 including any continued/deferred cases.
[Amended 07-28-2022]
 - (3) Alternates shall generally be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the Chairperson shall select the alternate who has not been activated for the longest time.
 - (4) If there are fewer than five members (including alternates) present, the Chairperson 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. Disqualifications/Recusals: **[Amended 07-28-2022]**
- (1) If any member finds it necessary to disqualify themselves from sitting in a particular case, as provided in RSA 673:14, they shall notify the Chairperson as soon as possible so that an alternate may be requested to sit in their 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 nonbinding.

- (2) 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 currently pending in the court. **[Amended 07-28-2022]**
 - (h) **Is a direct or indirect abutter [Added 07-28-2022]**
- (3) Either the Chairperson or the Member disqualifying themselves before the beginning of the public hearing on the case shall announce the disqualification. The disqualified may step away from the table during the public hearing and during all deliberation on the case as he/she so chooses. **[Amended 07-28-2022]**

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

- (1) Call to order by the Chairperson.
- (2) Pledge of allegiance. **[Added 9-26-2019]**
- (3) Introduction/order of business. Attachment "A". **[Added 9-26-2019]**
- (4) Roll call by the Clerk.
 - (a) Chairperson seats any Alternate appointments due to absences. **[Added 07-28-2022]**
- (5) Announce any adjustment to the agenda (order of cases etc.) **[Added 07-28-2022]**
- (6) Unfinished Business (Continued or Deferred Hearings).
- (7) New Hearing(s). Board will not hear new cases after 11:00 p.m. **[Amended 9-26-2019]**
 - (a) The Zoning Administrator will read the case into the record. **[Added 07-28-2022]**
 - (b) The Zoning Administrator will read the Staff Report. **[Added 07-28-2022]**
- (8) Requests for Rehearing.
- (9) Approval of Minutes from Previous Meeting(s).
- (10) New Business.
- (11) Communications and Items of Interest to the Board, Other Business.
- (12) Adjournment.

(Note: Although this is the usual order of business, the Board may wish to hold the hearings immediately after the roll call in order to accommodate the public, based on a positive vote of the Board.)

§ 143-8. Application Process.

A. Applications

- (1) Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Zoning Administrator (or designee), who shall record the date and time of receipt.
 - (a) Application deadline for meeting is 12:00 noon, 12 business days (Monday through Friday, including holidays) prior to the scheduled meeting date.
 - (b) Only complete and accurate applications will be submitted for agenda action. Incomplete or inaccurate applications will not be submitted for agenda action.
- (2) Appeals from an administrative decision taken under RSA 676:5 shall be filed within 35 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the Board. **[Amended 07-28-2022]**
- (3) All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.

B. Public Notice.

- (1) Public notice of hearings on each application shall be given in general newspaper and shall be posted at Town Hall, the Town Public Library and the Post Office not less than five (5) days 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.
- (2) Personal notice shall be made by certified mail to the applicant and all direct abutters and regular mail for indirect abutters within 200 feet not less than five (5) days before the date of the hearing. The applicant shall pay for all required notice costs in advance. **[Amended 07-28-2022]**
- (3) A property/site location Notification sign shall be posted regarding the Public Hearing for all cases in front of the ZBA, which require a Public Hearing and subsequent notice per RSA 676:7 shall also have posted a prescribed notice on a sign not larger than three (3) sqft on the subject property. The Zoning Administrator shall prepare such notice as follows: Type of appeal/application, Address of subject property, Brief description of the appeal/application, Date of Public Hearing, and Town contact information for details. The property owner shall allow the Zoning Administrator to place the sign on subject property closest to the most heavily traveled Right of Way. The Zoning Administrator shall place and post the sign for 14 days (counting the posting day and the Hearing day). The property owner shall remove the sign no later than 5 days after the Public Hearing. **[Added 07-28-2022]**

C. Public Hearing. The conduct of public hearings shall be governed by the following rules:

- (1) The Chairperson shall call the hearing in session by instructing the Zoning Administrator to report on the first case. **[Amended 07-28-2022]**
- (2) The Zoning Administrator shall report why the case has been brought before the Board.
- (3) Members and Alternates of the Board, and any party to the case, may ask questions at any point during testimony once recognized by the Chairperson.
- (4) Each person who appears shall be required to state their name and address for the record and indicate whether they are a party to the case or an agent or counsel of a party to the case.
- (5) The applicant shall be called to present their appeal.
- (6) Those appearing in favor of the appeal shall be allowed to speak.

- (7) Those in opposition or neutral to the appeal shall be allowed to speak.
- (8) The applicant and those in favor shall be allowed to speak in rebuttal.
- (9) Those in opposition to the appeal shall be allowed to speak in rebuttal.
- (10) Any person who wants the Board to compel the attendance of a witness shall present their request in writing to the Chairperson in accordance with RSA 673:15.
- (11) 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.
- (12) The public hearing on the Case shall be declared closed and the Case will be declared to be before the Board. The Board will deliberate and make its decision.
- (13) All subsequent cases shall then be heard in the order they were presented.

§ 143-9. Decision Process.

- A. Before deliberations begin, the Chairperson shall allow non-sitting alternates, the Selectboard's Liaison, if present, and the Zoning Administrator or his/her replacement to ask questions and give input, if they so desire.
- B. Once this phase is completed, the Chairperson shall declare the matter before the Board and the sitting members present who are voting will raise any further questions they may have and then deliberate all concerns in order to reach a decision on the request.
- C. The Board shall vote on each of the applications for which testimony was given, after adequate deliberations.
- D. For the granting of variances: the Board will consider a “vertical” (member) method of voting on each request. **[Added 04-11-2019]**
- E. The Chairperson shall announce all decisions after the vote has been taken, and explain that the appeal/rehearing process is available to all aggrieved within 30 days of the meeting vote per RSA 677:2. **[Amended 9-26-2019; 07-28-2022]**

§ 143-10. Deferment and Withdrawal.

- A. After public notice has been given, each application presented to the Board for consideration may be deferred or withdrawn only by action of the Board, following receipt of written notice to the Zoning Administrator or to the Board, itself, by the applicant. A sitting member must make a motion to defer until the next regular meeting or a date specific, that motion must be seconded and voted on by the sitting members of the case in question, and abutter notice shall be presumed to have been accomplished by the decision of the Board's vote.
- B. In the event that a deferred applicant is not ready when the case comes back before the Board, the Board may initiate withdrawal of the application, with or without prejudice, where "with prejudice" means that any new application (unless substantially changed) cannot be filed for a period of one year. Filing fees shall not be returned for withdrawn cases that have been reviewed and processed by staff with public notice of a scheduled hearing having been posted.
- C. Moreover, once an application has been withdrawn, any re-application shall be considered a new application and the applicant shall be required to pay all applicable fees for consideration. In the event of a Board-initiated deferment, because members felt it necessary for more information or other reason, a sitting member must make a motion to defer until the next regular meeting or a date specific. That motion must be seconded and voted on by the voting members of the case in question, and abutter notice shall be presumed to have been accomplished by the decision of the Board's vote. But, in some rare instances, the Board may require that notification fees be paid again for deferred cases in order to ensure that abutters are properly notified. In the event of the Board's acceptance of a request for deferment by the applicant at the meeting, the request shall be handled in the same manner

as a Board-initiated deferment. In the event that the applicant is not ready when the case comes back before the Board, the Board may initiate withdrawal of the application, with or without prejudice, as described above.

§ 143.11. 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 RSA 677:3. [Amended 07-28-2022]

§ 143.12. 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 677:2.

§ 143.13. Records.

- A. The records of the Board shall be kept by the Zoning Administrator and made available for public inspection at Hudson Town Hall in accordance with RSA 673:17.
- B. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made (RSA 676:3).
- C. 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 (RSA 91-A:2 II).

§ 143.14. 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. A majority of the Board present shall vote any waiver.

§ 143.15. Joint Meetings and Hearings.

- A. 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 Inspector of Buildings, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other Land Use Board.
- B. Joint business meetings with any other Land Use Board may be held at any time when called jointly by the Chairperson of the two Boards.
- C. A public hearing on any appeal to the Board of Adjustment will be held jointly with another Board only under the following conditions:
 - (1) The joint public hearing must be a formal public hearing on appeals to both Boards regarding the same subject matter; and
 - (2) If the other Board is the Planning Board, RSA 676:2 requires that the Planning Board Chairperson shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chairperson shall chair the joint hearing; and
 - (3) 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
 - (4) The other Board shall concur with the above.

Attachment “A” [8-27-20]

Chairperson’s introduction/order of business

Good evening ladies and gentlemen. Welcome to the **(Date)** Hudson Zoning Board of Adjustment. I call this meeting to order **(state the time)**.

If you could please stand and join me in the Pledge of Allegiance.....

We will proceed with cases in the order they appear on tonight's agenda unless the Board deems it appropriate to take a case out of order. No new case will be heard after 11:00pm. Any carryover cases will be heard at the next carryover meeting usually the 2nd Thursday. State law and local ordinances set out the criteria that must be met in order for this Board to grant a request before the Board. These minimum requirements are outlined on application forms in the Town’s Land Use Office. Applicants should proceed with this format to provide adequate justification for the Board to grant their request.

The Chairperson will open the Hearing to hear testimony either for or against the request. The order of testimony will first be the applicant presenting their case and why it should be approved; next testimony from those supporting the applicant will be heard; and last will be testimony from those either neutral to or against the proposed case. If necessary a second round of testimony will be heard to respond to those in opposition and subsequent rebuttal.

All discussions will be between the applicant and the Board. Please be respectful of all and in interest of time refrain from repeating previous testimony. New documentation will be accepted by the Board for consideration this evening, but may cause the case to be continued or deferred. The Board reserves the right to ask for additional testimony at anytime.

After hearing the facts from all parties the Chairperson will close the public hearing and the Board will deliberate and vote either to approve, deny or defer the request before moving on to the next case.

Attachment “A” (CONTINUED)

The Selectman’s Liaison may participate in Board discussion, but does not participate during deliberation or vote on the case.

Handouts are at the back of the room: consisting of the agenda for tonight, and re-hearing request for those that feel aggrieved and wish to appeal any decision the Board may have made. Please be aware of the 30 day time period.

All those that wish to speak are asked to come either to the lectern or the adjacent table, speak clearly, state your name and address. Please spell your last name for the recorder.

Before we begin a few housekeeping items:

- Turn off your cell phones
- There is no smoking in the building
- Please refrain from talking amongst yourselves as it distracts from hearing the testimony of the case

Will the Clerk please call for attendance?

Appendix “B” “Clerk” Duties [07-28-2022]

Roll Call / Attendance Sheet: Sheet provided by Town staff. Mark each Member as either Present, Absent or Excused – as well as Zoning Administrator, Selectboard Liaison, Recorder and Selectboard Liaison Alternate.

Case # Sheet: Prefilled by Staff with Name of Applicant, Case # etc. For each Member identify if present and whether voting on the Case (“Sitting Member” = voting on Case); identify who made the motion and who seconded the motion. Write out the Motion and any conditions/stipulations applied to it and the vote. If there is opposition [or abstinence] must identify the individual(s) and reason(s) why.

Individual Member Vote Sheet: Collect and make sure they are signed.

Exhibits / Material received at/during meeting: Write the Case # it applies to, date received (the date of the meeting) and assign it an Exhibit #, beginning with “A”.

Place all Sheets in ZBA Clerk Binder / Notebook.

CLERK PURPOSE –With a reliable Recorder and the recent change to the ByLaws (including the shift of preparing NODs to the Recorder), extensive note taking is no longer required by the Clerk – just the basics to satisfy RSA 91-A:2.II

- in the event that something happens to the Recorder, the Clerk's notes can be utilized to produce and meet the RSA's (minimum) Minute requirements as follows:

"Minutes ... shall include the names of members, persons appearing before (the Board) ... and a brief description of the subject matter discussed and final decisions ... who made and seconded the motion..." and the vote

Appendix “B” “Clerk” Duties (CONTINUED)

CLERK / MEETING BINDER

- 1) Meeting Date
- 2) Time Chairperson called meeting to order
- 3) Standard intro – in the order performed: Pledge, Preamble, attendance
- 4) Case # and who read into the record
- 5) Name of person(s) presenting the Case
 - Applicant
 - Applicant’s attorney – full name, firm name and address
 - Engineer - full name, firm name and address
 - Other (example: parent, child, realtor)
 - Exhibits, if any received during hearing
- 6) Public Testimony
 - Time opened
 - Chairperson requests an order – supporting/opposed/neutral
 - ID who addressed the Board – full name & address
 - Time closed
- 7) Motion
 - On the “roll call” (summary) sheet:
 - ID who made the Motion & who seconded
 - Write out any stipulations, if made
 - Vote – if any opposed or abstained, id by name & why
- 8) Repeat 4), 5), 6) &7) for each Case on the Agenda
- 9) Agenda Item # - Minutes etc. – see 7)
- 10) Motion to adjourn – who made & seconded - Time adjourned -