

**TOWN OF DANBURY, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENTS**

RULES OF PROCEDURE

The primary obligation of ZBA members is to serve the public interest, and to conduct themselves so as to maintain public confidence in the ZBA and the conduct of its business.

Officers

1. **A Chairperson** shall be elected annually by a majority vote of the Board at the 1st meeting following town election at the call of the Chair. 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. The Chair shall have the authority to preserve order at all meetings and hearings and can request attendees to maintain appropriate conduct or request them to leave. The Chair shall prepare a yearly report of the Board's activities for publication in the Town's Annual Report and perform all other duties of the presiding officer.
2. **A Co-Chairperson** shall be elected annually by a majority vote of the Board at the 1st meeting following town election at the call of the Chair. The Co-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.
3. **A Secretary** shall be elected annually by a majority vote of the Board at the 1st meeting following town election at the call of the Chair. The secretary shall maintain a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct in the absence of the clerk.
4. **A clerk** shall be hired to prepare accurate minutes of the meetings of the ZBA, shall be responsible to see that all required notices are posted, published and mailed prior to each such meeting and shall perform any other duties as directed by the Chairperson. The clerk shall have no vote.
5. All officers shall serve for one year and shall be eligible for re-election.

Members and Alternates

1. Up to **three alternate members** shall be appointed by the Board and should attend all meetings to familiarize themselves with the workings of the Board and 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 or 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 the table and no longer participate 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 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 must be a resident of 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 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.

Meetings / Hearings

1. **Meetings / Hearings** shall be held at the call of the Chairperson per RSA 673:10,I at the Danbury town hall, 23 High Street or other location as scheduled by the Chairperson. Notice will be given 24 hours in advance to each member and published on the town website 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.
 - a. 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.
 - b. If any regular Board member is absent from any meeting or hearing, or disqualifies himself/herself 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.
 - c. Alternates shall be activated at the call of the Chairperson.
 - 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, it 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 himself/herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the Chairperson 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 nonbinding.

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/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 Chairperson or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall exit the meeting room during the public hearing and during all deliberation on the case.

Order of Business

1. The order of business for meetings shall be as follows:
 - a. Call to order by the Chairperson.
 - b. Roll call by the Chairperson.
 - c. Minutes of previous meeting.
 - d. Unfinished business.
 - e. Public hearing.
 - f. New business.
 - g. Communications and miscellaneous.
 - h. Other business.
 - i. Adjournment.

[Note: Although this is the usual order of business, the Board may wish to hold any **hearings** immediately after the roll call in order to accommodate the public.]

Applications

1. **Applications:**
 - a. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision or when such decision becomes known or reasonably could have been known by the petitioner as determined by the Board.
 - b. Each application for a hearing before the Board shall be made on forms provided by the Board that are available on the town website. Each application shall be presented to the administrative assistant of the Board of Selectmen who shall record the date of receipt over his/her signature and shall be accompanied by the application fee. The administrative assistant will notify the clerk or Chair of receipt of the application.
 - c. Members should not discuss any application that is coming before the Board outside of a ZBA meeting or hearing.
2. **Forms:**
 - a. All forms and revisions thereof as found on the town website shall be adopted by resolution of the Board and shall become part of these rules of procedure.
 - b. Any applicant being represented by someone other than legal council must fill out the ZBA Town of Danbury Representative Appointment
3. **Public Notice:**
 - a. Public notice of public hearings on each application shall be given in the manner prescribed in RSA 676:7.
 - b. The notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal.
 - c. The applicant shall pay for all required notice costs in advance.

Public Hearing

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

- 1 All persons giving testimony must sign in on the Hearing Sign-in Sheet.
- 2 The Chairperson shall call the hearing in session and ask for the clerk's report on the first case.
- 3 The clerk shall read the application and report on how public notice and personal notice were given.
- 4 As instructed by the Chairperson, each person who appears shall be required to come to the podium and speak into the microphone. He/She must state his/her name and address and indicate whether they are a party to the case or an agent or counsel of a party to the case.
- 5 When recognized by the Chairperson, members of the Board may ask questions at any point during testimony.
- 6 The Board will not allow testimony by the applicant, public or any Board member, which would degrade the character of anyone present at the hearing/meeting.
- 7 The applicant shall be called to present his/her appeal.
- 8 Those appearing in favor of the appeal shall be allowed to speak.
- 9 Those in opposition to the appeal shall be allowed to speak.
- 10 The applicant and those in favor shall be allowed to speak in rebuttal.
- 11 Those in opposition to the appeal shall be allowed to speak in rebuttal.
- 12 Any member of the Board, through the Chairperson, may request any party to the case to speak a second time.
- 13 Any party to the case who wants to ask a question of another party to the case must do so through the Chairperson.
- 14 Any person who wants the Board to compel the attendance of a witness shall present his/her request in writing to the Chairperson not later than 3 days prior to the public hearing.
- 15 The Chairperson or the acting Chairperson may administer oaths. State law permits the Chairperson to swear in witnesses per RSA 673:15.
- 16 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.
- 17 The Chairperson shall present a summary setting forth the facts of the case. Opportunity shall be given for correction from the floor.
- 18 Prior to the end of the hearing, the Board will determine whether a site visit is needed before a decision can be made. The Board must take a vote if there is to be a request for a site visit.
 - i. If the Board decides to conduct a site visit, a time and date certain will be arranged, the hearing will be continued, and deliberations will only occur after the site visit has been conducted.
 - ii. If the Board concludes that a site visit is not needed, then the hearing will proceed as follows.
- 19 After all testimony has been heard and the Board's questions have all been satisfactorily answered, the hearing shall be declared closed. The Chairperson may then choose to move to deliberation.
- 20 If the case is not deliberated at that time, the Board will decide, and announce a time, date, and place when it will be deliberated. If a date certain is not set, the deliberative session will be duly noticed.
- 21 The hearing on the appeal shall be declared closed and the next case, if any, called up.

Deliberation

1. Before closing for deliberation, the Chair will read the following at the beginning of each deliberative session:

“The Board at this time is entering into a deliberative session. The Board will not entertain or take any additional information from the applicant, the applicant’s representatives or the public during this session. The Board reserves the right to request additional information at its discretion.”

2. If the Board is ready to proceed with a decision, the Chair will present each criterion which needs to be considered and have each Board member review whether or not, in their opinion, that criterion has been met and why.
 - a. Should the Board decide during deliberation that a site visit is required, the Board will vote to reopen the Public Hearing to establish a date and time for a site visit and the continuation of the Public Hearing and Deliberation.
 - b. Should an applicant request a withdrawal of their application during the Board’s deliberations, the Board will take a vote on whether to allow the withdrawal or to complete its deliberations to reach a decision. If the applicant’s withdrawal is allowed, it will be done with prejudice and the understanding that the same or similar application will not be accepted by the Board (see Fisher v. Dover and E.1.e. above).

Voting

1. Once all criteria have been deliberated, the Chairperson may make a motion or 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, the opposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.
2. All members hearing a matter shall vote; abstention shall not be allowed unless a recusal arises.

Decisions

1. The Board shall decide all cases within 90 days of receipt of application and shall approve, approve with conditions, or deny the application. 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 for the denial. The notice shall also be given to the town clerk, and/or other town officials as determined by the Board.

Reconsideration by the Board / Motions for Rehearing

1. Any motion for a rehearing must be submitted in writing to the administrative assistant of the Select Board at the town office during normal business hours. See *Cardinal Development v. Winchester*, 157 NH 710 (2008). The ZBA 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 (30 calendar days) of the original decision as per 74 Cox Street, LLC v. City of Nashua [September 21, 2007].

2. **Rehearing Procedures:** 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 Danbury 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. The decision shall include specific written findings of fact that support the decision. [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 days of the public meeting. Approved minutes may be posted on the website or available at the town clerk's office. [RSA 91-A:2 II](#)

Amendments

1. Rules of procedure shall be adopted or amended by a majority vote 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

1. 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 that the Board of Adjustment may hold joint meetings or hearings with other "land use boards", including the Planning Board, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board. On 3/28/2017, the Danbury ZBA voted not to hold joint **hearings** in order to be neutral and detached from all other boards to ensure impartiality. However, the ZBA may hold joint **meetings**.
2. 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.
3. The Board also voted on 3/17/2011 not to accept any anonymous letters for consideration in any meeting or hearing.

Adopted by the Danbury Zoning Board of Adjustments on SEPT 15, 2023



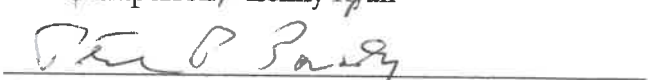
Chairperson – Toni Maviki



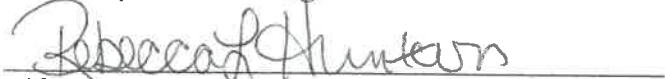
Co Chairperson / Lenny Ryan



Secretary – Walter Wright



Member – Peter Parady



Alternate – Becky Huntoon