

# **Town of Hanover**

# **Zoning Board of Adjustment**

## ***BY-LAWS***

[As amended by vote of the Board May 2, 2024.]

### **A. AUTHORITY.**

1. These by-laws are adopted under the authority of New Hampshire RSA 676:1 and the Zoning Ordinance of the Town of Hanover.

### **B. POWERS AND DUTIES OF MEMBERS AND ALTERNATE MEMBERS.**

1. Members of the Board, having been duly appointed by the Board of Selectmen under RSA 673:3 and Section 206.1 of the Zoning Ordinance, and having been duly sworn as prescribed by RSA Ch. 42, shall, when acting with a quorum as provided below, have all the powers and duties granted by RSA 674:33 and the Zoning Ordinance.
2. Alternate members of the Board, having been duly appointed by the Board of Selectmen under RSA 673:6 by authority of a vote adopted by the Town Meeting of September 5, 1974, and having been duly sworn, may, unless disqualified under Section D(4) below, sit in hearing with members of the Board, may participate in the discussion and deliberation of cases, and may participate in the discussion of other matters before the Board, but shall be without vote or any powers or duties, unless designated to serve in place of a member, as provided under Section D(3) below. However, no member or alternate member shall sit or participate in deliberating a case unless he or she has attended the public hearing, or continued hearing, for that case.

### **C. OFFICERS.**

1. A Chair shall be elected by a majority vote of the Board annually in the month of September or if there should be no meeting in September then at the first meeting thereafter. The Chair shall serve for one year and shall be eligible for re-election. He or she shall preside over meetings and hearings, appoint such committees as directed by the Board, and shall affix his/her signature in the name of the Board to decisions and other documents approved by vote of the Board.
2. A Vice-Chair shall be elected annually in the same manner and at the meeting at which the Chair is elected. The Vice-Chair shall serve for one year and shall be eligible for re-election, shall preside in the absence of the Chair, and shall have full powers of the Chair on matters which come before the Board during the absence of the Chair.

3. A Clerk shall be elected annually in the same manner and at the meeting at which the Chair is elected. The Clerk shall serve for one year, shall be eligible for re-election, shall ensure that there is maintained in the Town office a record of all meetings, transactions, and findings of the Board, and shall perform such other duties as the Board may direct by resolution. In the absence of the Clerk, the Chair shall appoint a member or alternate member to serve as acting clerk.

## **D. MEETINGS.**

1. Public hearings shall be held at a monthly time scheduled in advance by the Board, and at the public place stated in the Public Notice. Meetings for deliberating cases and rendering decisions will usually be held during the week following the hearings, on a day and time determined by the Board. However, at the discretion of the Board deliberating and deciding cases may take place immediately following the hearings, or for good cause the meeting for deliberations and decisions may be scheduled for, or postponed to, a later specified date and time. The date and time of deliberations and decision shall be announced at the hearing, and notice thereof shall be posted in accordance with State law. Hearings or meetings for deliberating cases and rendering decisions, once called to order, may be adjourned or continued to a later specified date and time without further posted notice.

Special meetings may be called by the Chair, provided notice is given to each member twenty-four hours prior to the time of such meeting and notice of such meeting is posted in accordance with the provisions of State law.

All meetings and hearings are open to the public, except that nonpublic sessions may be held in accordance with RSA 91-A.

2. **Quorum.** A quorum for all meetings of the Board shall consist of three members, which may include alternates sitting in place of members. RSA 674:33, III provides that “the concurring vote of any 3 members of the board shall be necessary to take any action on any matter on which it is required to pass.” For this reason, the Board will make every effort to ensure that a full five-member Board is present. In the event a full five-member Board is not present, the applicant shall be informed of the three-member concurrence requirement. The applicant, if requesting a Special Exception or Variance, shall be given the choice whether to proceed with a smaller board, or continue the hearing until a full board is present. The applicant, if appealing an administrative decision under RSA 674:33 I(a)(1), shall proceed with the case before a smaller board. In all cases where the applicant is heard by the smaller Board, then a split decision which might have been favorable to the applicant but for the missing member(s) shall be deemed grounds for a rehearing if requested.
3. **Alternate Members.** If any regular Board member is absent from any meeting or hearing or disqualifies him/herself from sitting on a particular case, the Chair, or Vice-Chair if presiding, shall designate an alternate member to serve in place of the absent or disqualified member, and such alternate shall have all the powers and duties of a full member of the Board while so serving. Designation of alternate members shall be made in

turn according to a plan of rotation subject to alternate member availability.

4. **Disqualification.** In accordance with RSA 673:14 no member shall participate in deciding or shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.

If any member finds it necessary to disqualify him/herself from sitting on a particular case, as provided in RSA 673:14, he/she shall notify the Chair as soon as possible so that an alternate may be designated. When there is uncertainty as to whether a member should be disqualified to act on a particular case, that member or another member of the Board may request that the Board vote on the question of disqualification. Such a vote may be requested only by one or more Board members sitting on the case. Any such request shall be made at the commencement of the public hearing on the case, and the vote shall be advisory and non-binding.

Any disqualification shall be announced by either the Chair or the member disqualifying him/herself 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 deliberations on the case.

In a case where a member of the Board has a relationship raising the potential for disqualification under this section, or where a member of the Board or his/her spouse is employed by any person directly affected in a case, that member shall either disqualify him/herself, request a non-binding vote, or shall state publicly at the hearing the precise nature of the employment or other relationship, giving reasons why his/her interests are not capable of being affected by the outcome of the case. After such statement, but before the hearing begins, any person directly affected in the case may object to that member's participation, stating the basis of the objection. Such an objection, including the basis therefore, shall be recorded in the minutes, but shall not be deemed to require Board member recusal, or a Board vote, unless such vote is requested by a Board member. In a case where a Board member has identified an employment or other relationship covered by this subsection, parties present at the hearing shall be informed by the Chair of the substance of this by-law, and of their opportunity to object.

5. **Order of Business.** The order of business shall follow the published agenda, but may be varied to suit the convenience of those attending the meeting.

## **E. APPLICATION/DECISION.**

### **1. Application.**

- a. Each application for action by the Board shall be made on forms provided by the Board and shall be presented to the Town Zoning Administrator who shall record the date of receipt over his/her signature.
- b. Each application shall be accompanied by an application fee in the amount determined by the Board of Selectmen.

- c. Appeals from an administrative decision taken under RSA 676:5 shall be filed in accordance with, and within the time periods specified by, 206.5.D of the Zoning Ordinance.
- d. The Zoning Administrator may reject any application not properly filled out and shall process the petitions in accordance with applicable laws and regulations.
- e. Any motion for rehearing of a decision of the Board shall be filed within thirty days of the date of notification in accordance with RSA 677:2, and shall be granted or denied by the Board within thirty days of receipt of the motion (RSA 677:3).
- f. All forms and revisions thereof shall be prepared by the Zoning Administrator, as prescribed by the Board. All forms and revisions thereof shall become a part of these by-laws.

**2. Public Notice.**

- a. Public notice of public hearings on each application shall be given in the Valley News and shall be posted at the Town Office not less than five days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, street (and address if applicable), 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. Personal notice shall be made by verified mail to the applicant and all abutters not less than five days before the date of the hearing. Notice shall also be given to the Planning Board, the Board of Selectmen, and other parties deemed by the Zoning Administrator to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
- c. Costs of all required notices must be paid for, in advance, by the applicant.

**3. Public Hearing.**

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

- a. The Chair shall call the hearing in session, and the Clerk shall read or summarize the public notice.
- b. The applicant shall be called to present his/her appeal and those appearing in favor of the appeal shall be allowed to speak.
- c. Those in opposition to the appeal shall be allowed to speak.
- d. The applicant and those in favor shall be allowed to speak in rebuttal.
- e. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- f. Unless continued pursuant to paragraph (n) below, the hearing on the appeal shall be declared closed and the next case called up.
- g. The Chair may administer oaths.

- h. Members of the Board may ask questions at any point during testimony, upon being recognized by the Chair.
- i. Any member of the Board, through the Chair, may request any party to the case to be recalled for purposes of further questions.
- j. Each person who appears shall be required to state his/her name and address and indicate whether he/she is a party to the case or an agent or counsel of a party to the case.
- k. Any party to the case who desires to ask a question of another party to the case must do so through the Chair. Questions which are rhetorical, argumentative, or which question a party's good faith or motivation need not be answered, and may be ruled out of order, as may answers of similar character.
- l. The Board of Adjustment will consider evidence that pertains to the facts of the case or how the facts relate to the provisions of the Town Zoning Ordinance and State zoning law.
- m. The applicant shall have the burden of presenting sufficient information to enable the Board to render a decision. If the Board deems the information presented with the application and at the public hearing inadequate, it may continue the hearing to a specific stated date, or grant the applicant additional time, specifying what information is required. In all cases in which the applicant is to provide additional information, the other parties shall be given an opportunity, as specified by the Board, to respond to the new information. After the public hearing for a case, or any continued session thereof, has been closed, no additional evidence or testimony may be submitted, except by Board permission. Failure of the applicant to provide adequate information may be grounds for disapproving the application.
- n. The Chair may limit the duration of testimony of anyone at the hearing in order to permit a fair hearing of views by others.
- o. After the public hearing for a case, or any continued session thereof, has been closed, the applicant may not withdraw the application except by permission of the Board. The Board may grant such permission due to extenuating circumstances that are beyond the applicant's control, or for other reasons the Board deems good cause for withdrawal.

#### **4. Decisions.**

- a. The Board shall decide all cases within thirty days or, if further information or evidence is required by the Board to be submitted by the applicant, then within thirty days of the formal receipt of such additional information or evidence and other parties' responses to it. Any legal questions Board members wish to ask of Town Counsel shall be specified by the Board at a meeting and directed through the Zoning Administrator.
- b. The Board will approve, approve with conditions, or deny the appeal in a written decision that includes specific written findings of fact that support the decision. If the application is not approved, the board shall provide the applicant with written reasons

for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval. All decisions of the Board shall be made available to the applicant, and, along with the minutes of the meeting at which the decision was made, placed on file in the board's office and made available for public inspection within 5 business days of such decision.

- c. In cases where the Board makes a decision immediately after the hearing, per Section D(1) above, the written decision shall either be prepared by the Board in open session at the time the decision is made, or the Board shall assign one of its members to work with the Board's staff to reduce the decision to writing, in sufficient time to make it public within 5 business days, as required by RSA 676:3.

## **F. RECORDS.**

The records of the Board shall be kept by the Code Office and made available for public inspection in the Code Office of the Town in accordance with statutory requirements. Minutes of all meetings, including names of Board members, person appearing before the Board, and a brief description of the subject matter, shall be open to public inspection not more than 5 days after the meeting. RSA 91-A:2, II.

## **G. AMENDMENT.**

These by-laws may be amended by vote of three sitting members if considered at not less than two meetings within two months.

Amended and approved: 2/26/90, 8/26/93, 2/25/99, 01/09/03, 4/25/05, 5/22/08 and 5/2/2024.

# HANOVER ZONING BOARD OF ADJUSTMENT POLICY ON BETWEEN-MEETING COMMUNICATIONS

(As amended March 3, 2022)

## **A. Purpose.** The aims of this policy are 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;
- clarify the extent to which the rules of the Board permit members, between meetings, to research issues, conduct site visits and prepare draft opinions or other potential Board actions, thus promoting efficient use of meeting time; and
- clarify the permissible use of electronic media such as email in this context.

## **B. Definitions.** In this policy:

- “Communication” means a transfer of information, objective or subjective, from one person to another. It includes face-to-face or phone conversations, letters, memos, emails, Web sites, or any other medium, regardless of the location or ownership of any device or equipment used. Any between-meeting communication involving more than one Board member shall be considered either a “Distribution” or an “Exchange.”
- A “Distribution” is a communication by a Board member to one or more other Board members, where no between-meeting response (except acknowledgment of receipt) occurs or is expected.
- An “Exchange” is a communication or series of communications among Board members, which is or invites a response.
- “Ex Parte communication” is a communication relating to the substance of a Case, outside of any legally noticed meeting, between a Board member and a person with an interest in, or affected by, a pending or future case, including, but not limited to, an applicant, an abutter, or any potentially aggrieved party (as utilized in RSA Chapter 676). The Zoning Administrator shall not be considered a person as defined above, as long as he/she/they are operating in their capacity as Zoning Administrator and does not advocate any particular result in communications with Board members outside a public hearing.
- “Case” is an application for a special exception or variance, an appeal from a decision of the Zoning Administrator, a request for rehearing, or any other adjudicative proceeding before the Board required to be decided on the record after the opportunity for interested parties to present evidence

- “Incidental communications” are communications between a Board member and an applicant, abutter, other interested party, or any member of the public, which is limited entirely to confirming information in the application or testimony offered at a public hearing.

**C. *Communications Permitted Except to the Extent Restricted.*** Except to the extent restricted or controlled by these rules, Communications between or among Board Members are permitted.

**D. *Distributions.*** Draft opinions, motions or other potential Board actions, as well as information derived from research and/or investigation of general or specific legal or factual issues may be disseminated as a Distribution. Such Distribution shall be placed in the public record of any Case to which it relates.<sup>1</sup>

**E. *Ex Parte Communications.*** Board members shall seek to avoid Ex Parte communications. If an Ex Parte communication is initiated by another person, the Board member contacted shall:

- Not discuss the substance of a Case; and
- Refer the person to the Zoning Office or recommend that he or she attend the relevant public hearing.

The affected Board member should report any Ex Parte communication to the Board at the public meeting to which it relates. The Board shall consider what action is appropriate in the circumstances. In any event, communications to a Board member relating to a pending Case must be placed in the public record of that Case.

**F. *Site Visits.*** Board members are encouraged to visit and inspect sites for information relevant to the case at hand. Visits may occur before and after the public hearing. Unless a publicly noticed meeting, if a quorum of board members visits at the same time, the members shall leave immediately, reducing the number of members on-site to less than a quorum. Incidental communications are permitted and Ex Parte communications are prohibited. In no case should board members venture an opinion on the case.

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<sup>1</sup> It should be noted that a Board Member may communicate his or her draft of an opinion or other written material for a Case to the Zoning Office before the public deliberation meeting to permit the Zoning Office to prepare copies of the material for consideration at the deliberation meeting so long as the draft of written materials is not communicated in a manner that results in consideration of the material outside of a meeting by any other member of the Board.

## ***G. Exchanges.***

### **Cases**

Exchanges among members of the Board relating to the substance of a pending Case may occur only in an open public meeting noticed in accordance with RSA 91-A provided, that between meeting exchanges between only two Board Members may occur for purposes of assisting decision drafting by recently appointed Board Members and for purposes of drafting decisions in complex cases. The Chair will identify cases for which two-person decision drafting is planned in the public hearing on such cases.

### ***Other Official Functions***

Exchanges among members of the Board relating to substantive issues involved in the transaction of any official function affecting citizens may occur only in an open public meeting noticed in accordance with RSA 91-A provided, that a between meeting Exchange between only two Board Members may occur so long as both take responsibility to assure that no other Board Member becomes involved in such Exchange.

## ***H. Scheduling and Agenda and Privileged Matters.*** Notwithstanding paragraphs D, E, or F of this policy, nothing in this policy prevents or requires public disclosure of any Communication that pertains solely to:

- Scheduling of meetings or hearings (e.g., dates and starting times of such meetings, placement of matters on the agenda, or estimated start times of meetings or particular agenda items);
- General procedural requirements pertaining to such scheduling and agenda matters.

Any Communications between or among Board Members, the Zoning Administrator and the Town Attorney or other member of the bar representing the Board for the purpose of obtaining legal advice is privileged information and will not be disclosed in the public record unless the Board decides otherwise.

## ***I. Unofficial Discussion.*** Outside Communications among Members of the Board are permitted to the extent allowed pursuant to RSA 91-A:2.

## ***J. 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 members of the Board, shall also apply to a members of a subcommittee.

- K.** ***Media.*** Members of the Board should not discuss the substance of any Case with the media.
- L.** ***By-laws.*** This Communications policy shall be made part of the By-laws of the Board in the form of an attachment.