

Town of Hudson, New Hampshire
Bylaws of the Zoning Board of Adjustment
(Revised as of June 23, 2011)

Chapter 143

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History: Adopted by the Zoning Board of Adjustment of the Town of Hudson 12-14-1978; amended in its entirety 06-23-1988, and again on 06-23-2011. Subsequent amendments noted where applicable.

143-1 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) 676:1. In the event of a difference between these bylaws and the applicable NH-RSAs, the NH-RSAs overrule.

143-2 Purpose

The purpose of these bylaws is to ensure an orderly procedure in the execution of the duties of the Board.

143-3 Bylaw 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.

143-4 Members and Officers

Unless otherwise modified by the applicable NH-RSAs, the Board shall consist of a total of ten members, including five regular members, who shall normally be sitting as voting members, and five

alternate members, who shall normally be sitting as non-voting members except when appointed to sit in place of a regular member who is recused or absent. All Board members (regular and alternates) shall have the same responsibilities, except an alternate member shall not vote unless appointed by the Chairman to sit in place of a regular member and shall not participate in the decision-making process after a motion has been made and seconded by voting members of the Board. (To clarify, alternate members shall sit at the table and are authorized to ask questions and make comments up until and during the time in which a motion is on the floor.)

- a) The Chairman shall be a regular member and shall be elected annually at the regular January meeting by a majority vote of the Board. The Chairman shall serve for a period of one year and shall be eligible for re-election. He/She shall preside over all meetings, hearings, and attorney-client sessions, appoint such committees as directed by the Board, and shall perform other such duties as the Board may direct.
- b) The Vice-Chairman shall be a regular member and shall be elected in the same manner and for the same period as the Chairman. The Vice Chairman shall be eligible for re-election. He/She shall have the same powers as the Chairman during the absence of the Chairman.
- c) The Clerk shall be a regular or alternate member and shall be elected in the same manner and for the same period as the Chairman and shall be eligible for re-election. He/She shall record the motions and votes of the Board as they are announced at the public hearing following the vote of the Board.
- d) In the event that neither the Chairman nor the Vice-Chairman is able to attend a meeting, the most senior regular member (that is, the one who has served longest on the Board) shall preside, fulfilling all nominal duties of the chairman.
- e) In the event that any of the officers, for any reason, is unable to continue in his/her elective capacity and upon notice to the Board of this effect, a new election will be held by the Board at a public meeting to elect a successor who will serve until the next annual election.
- f) All members, including alternates, are expected to attend all meetings. In the event that any regular member or alternate member finds that he/she cannot attend a meeting for any reason, that member shall inform the Chairman of that fact as soon as practical, so that the Chairman may be aware in due time of any likelihood that a quorum may not be present at the meeting; in the event that communication cannot be established with the Chairman at his/her residence, the member shall leave word with the Zoning Administrator's office. In the event that any member fails to attend any two properly scheduled meetings in any four-month period without providing prior notice of that fact to the Chairman or to the Zoning Administrator's office, the Chairman shall ask the Board to consider whether the Board of Selectman should be asked to declare that member's position be vacated and to appoint a replacement to fill out that member's term of office.

143-5 Meetings

Regular and special meetings shall be held at the Hudson Town Hall or at such other locations as the Chairman may determine, starting at 7:30pm, on the fourth Thursday of each month and/or as otherwise required, at the prerogative of the Chairman, with notice of each such meeting, signed by the Zoning Administrator or the Chairman, being posted on bulletin boards at Town Hall, the Town Library, and the Post Office. All meetings shall be advertised in a public newspaper having general circulation

throughout the Town of Hudson at least five days prior to the date of the meeting. In addition the notice for each specific case shall be sent by certified mail, at the applicant's expense, in time to be received at least five days prior to the date of the meeting, to the applicant, to the applicant's representative (if known), to the owner of the property in question (if other than the applicant), to all legal abutters of the property, as defined by NH-RSA 672:3, and to those others required by New Hampshire Law under NH-RSA 676:7 (holders of conservation, preservation, or agricultural preservation restrictions). This notice shall contain the agenda description elements as follows:

- a) A code designation consisting of the applicable tax maps of the property in question, together with the date of the first hearing on that application.
- b) A designation of the resolution of any previous action on this same application. (i.e. the word deferred or rehearing)
- c) The name(s) of the applicant(s) and address(es) of the applicant(s), together with the address of the property in question.
- d) The type of application—e.g., variance, special exception (including type, such as wetland or home occupation, ALU, etc.), equitable waiver, appeal of an administrative decision, etc.
- e) Specific details of what is being requested.

143-6 Conduct of Hearings

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

- a) The Chairman shall call the meeting to order, provided that a quorum of three or more members is present. The Chairman shall explain the procedure to be followed and make any appropriate general announcements and the Board will then deal with each successive case, as follows:
- b) The Chairman shall instruct the Clerk to call the case into the public record.
- c) The Chairman will ask the Zoning Administrator to explain why the case has been brought before the Board.
- d) The applicant or his/her representative shall present his/her reasons for the hearing. At this time or throughout the progress of the hearing, a lesser request than that advertised may be accepted by the Chairman.
- f) Others in favor of the request shall be allowed to speak.
- g) Those in opposition or with questions or concerns to the request shall be allowed to speak following those speaking in favor.
- h) The applicant or his/her representative shall be allowed to speak once in rebuttal and shall only respond to the comments received from those in favor or in opposition, and or those with questions and concerns, unless otherwise authorized by the Chairman.
- j) All speakers shall approach the lectern and identify themselves for the record and state his/her full street address (and, if applicable, the name and address of the firm in which they are employed).
- k) During the testimony portion of the hearing (up until the time at which the Chairman declares the matter before the Board, each member of the Board (including alternates), the Selectmen's Liaison, and/or the Zoning Administrator or his/her representative may ask questions to clarify information regarding the case. The Chairman shall have the authority throughout this process to

cut short any discussion that is felt to be irrelevant or redundant to what has already been said, but the voting members of the Board shall have the power to overrule any such determination by voting in favor of a properly introduced motion to do so.

- l) Any person who wishes to ask questions of another person during the hearing must be recognized by the Chairman and go through the chair.
- m) Pursuant to RSA 674:33, III, the concurring vote of three members of the Board shall be necessary to reverse any action of the administrative official or to decide in favor of or against the applicant on any matter on which the Board is required to make a decision. If a quorum of three members is not present, no cases will be heard. If fewer than five sitting members are available to hear any given case, the Chairman shall explain the risk and the applicant may either request a deferment to the next available meeting or else request in writing a withdrawal without prejudice and re-file the application (in which latter case new fees shall apply).

143-7 Vote and Notification of Decision

The Board shall vote on each of the applications for which testimony was given, after adequate deliberations. The Chairman shall announce all decisions after the vote has been taken. Before deliberations begin, the Chairman shall allow non-sitting alternates, the Selectmen's Liaison, if present, and the Zoning Administrator or his/her replacement to ask questions and give input, if they so desire. Once this phase is completed, the Chairman 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.

143-8 Deferment and Withdrawal

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. 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. . 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.

143-9 Requirement of Representation

Each application presented for consideration to the Board for which no representation appears at the hearing shall be subject to denial by the Board if the Board feels that there is insufficient or unclear evidence accompanying the application to allow proper consideration by the Board.

143-10 Rehearings

Application for a rehearing to appeal the Board's decision may be made by any interested party, either for or against a decision, within thirty calendar days of the Board's decision, beginning with the day following the date on which the decision is made. The written request for rehearing and any initial substantive information must be received and stamped within that same thirty-day period following the decision—that is, must be delivered on or before the thirtieth day in time for Community Development Department office personnel to provide initial processing and to stamp the submittal as received as part of their normal work day, which ends at 4:30 p.m., Monday through Friday (meaning, for all practical purposes, that it must be in their hands no later than 4:00 p.m. of the thirtieth day). It is the requestor's responsibility to ensure that the request for rehearing is received and stamped within the specified timeframe. [Note: delivery to the Hudson Police Department, to the Hudson Fire Department, or to any department other than the Community Development Department is not acceptable.] All applicants are responsible for this request to be received at the Community Development Department in the allotted time by State law. At the next available meeting following receipt of such a rehearing request, the Board shall make a determination of whether or not to rehear a given case. The request for rehearing either shall present the full argument as to why the requestor believes the Board's previous decision to have been unlawful or unreasonable and/or shall have any new evidence in it that was not presented during the original hearing, of such nature as to warrant the belief that a different decision may have been obtained if that evidence had been presented. To satisfy this condition, the request must include or be accompanied by sufficient delineation and /or description of that new evidence as to allow the reviewing Board members to determine that it is relevant and meaningful. Evidence of prejudicial errors of law or procedures must be accompanied by sufficient delineation and/or description of that evidence of error as to allow the reviewing Board members to determine that it is relevant and meaningful. [Note: in accordance with NH-RSA 677:3, no ground not set forth in the application shall be urged, relied upon, or given any consideration unless the Board for good cause shown shall allow the applicant to specify additional grounds.] All requests for rehearings shall be processed as follows:

- a) The Chairman and the Zoning Administrator will establish a date and time for the purpose of reviewing the request—either at the next available meeting or at such other interim time as seems appropriate, in which case the Chairman shall call a special meeting. All members of the Board sitting on the case during the hearing at which the contested decision was made shall be notified of the date and time of the request for rehearing. In the event any of those five members cannot attend the specific date and time for the rehearing the Chairman shall appoint an alternate to sit in place of that member for the particular request for rehearing, with preference being given to alternates who heard the previous testimony pertaining to that case. If the original case extended over more than one meeting, alternate attendance at the final session, at which the previous decision was made, shall have a higher priority than attendance at any earlier sessions. In the event that members must be seated who were not in attendance at the earlier hearing(s), the Chairman shall ensure that each such replacement is provided with a copy of all the minutes regarding the hearing(s) and given sufficient opportunity to review those minutes. In the event

that a quorum of five sitting members is not available, the Chairman shall rule that the matter is to be deferred to the next available meeting.

- b) All requests for rehearings will be discussed by the Board during a public meeting, with this discussion being a matter before the Board. No applicant or abutter testimony shall be allowed.
- c) The Board shall discuss whether or not there is sufficient evidence given in the request for rehearing to warrant a complete rehearing of the case or if the Board possibly made an error in making the decision that was made. If any member of the Board determines that there is sufficient new evidence to be presented or that the Board possibly made an error with respect to the original decision, that member may make a motion to rehear; if that motion is seconded, the Board will vote on the matter. If any member of the Board determines that there is not sufficient new evidence or that the Board's previous decision was not in error, that member may make a motion not to rehear; if that motion is seconded, the Board will vote on the motion. In either case, the vote must be a plurality of three or more members voting either to hear or not to rehear.
- d) If a decision is made to rehear the case, the Board shall schedule a complete rehearing of the case. In the event there were multiple items in one case and some were approved and some were denied, the Board shall rehear the entire case, not just the items that were denied by the Board at the original hearing. In the event that the Board decides to rehear a case, the person(s) who requested the rehearing shall be required to pay all applicable notification fees in order to notify abutters and the public of the new rehearing date; if these fees are not paid within thirty days following the granting of the rehearing, the original decision of the Board shall stand firm.
- e) Following a vote not to rehear, the Board shall not accept any further request(s) to rehear.

143-11 General Rules

- a) All members of the Board (sitting or non sitting) may ask questions through the Chairman at any point during the testimony. In general, however, both applicants and interested parties should be allowed to make their initial presentation as defined in section 143-6 without interruptions or distraction from the Board, unless clarification is felt to be sufficiently necessary to warrant such an interruption.
- b) Personal debates or interactive dialogue between members of the Board and members of the public or other members of the Board will not be permitted. Any person in attendance who wishes to ask a question of any other speaker during the testimony phase must wait until the initial testimony is given, at which time section 143-6 applies to the person wanting to ask questions.
- c) In the event that any member of the Board decides for any reason that he/she can not cast a vote on a matter before the Board, and this is known to that member prior to the matter coming before the Board, that member shall notify the Chairman that he/she is recusing himself/herself, and the Chairman shall appoint an alternate member to sit on that particular case.
- d) In the event that the matter is before the Board, and the member has heard the deliberations and feels that he/she cannot make a decision in the matter, that member shall step down, and the Chairman shall appoint an alternate member to sit the place of the stepped-down member for that particular case. (Note: each sitting member must vote either for or against a motion; no abstentions shall be allowed.)

- e) In the event that any one or more cases take longer to be processed than would be reasonably expected, the following limits shall apply:
 - 1) Whatever hearing is in progress at 11:00 p.m. will be the last hearing to be heard that evening—that is, no new hearings shall be initiated after 11:00 p.m. If any other cases on that evening’s agenda are waiting to be heard, they will be deferred to a date certain, to be designated by the Board at that time. The declaration of deferral to a date certain shall be construed to constitute full notice to interested parties and members of the public.
 - 2) No hearing will be continued beyond 12:00 midnight, and any hearing in progress at that time will be deferred to a date-certain, to be designated by the Board at that time.
- f) If no subsequent Planning Board action is necessary, decisions granting variances or special exceptions shall be valid for a grace period of one calendar year following approval by the Zoning Board of Adjustment. If subsequent Planning Board action is necessary, as so ruled either by the Zoning Board of Adjustment or by the Zoning Administrator, this grace period shall be changed, provided that the applicant gains Planning Board acceptance within three hundred and sixty-five days following approval by the Zoning Board of Adjustment, such that decisions granting variances and special exceptions shall be valid for one calendar year following approval by the Planning Board of the applicable subdivision/site plan. In the event that any applicant not needing to go before the Planning Board has not initiated that process within one hundred eighty days following ZBA approval, or any applicant obtaining subsequent Planning Board approval is found not to have completed substantial development within one calendar year following Planning Board approval, the variance(s) or special exception(s) shall be held to have expired, with all rights and/or privileges owing to the property in question thereby reverting to whatever status would pertain if no such decision(s) had been made.
- g) For any request for extension or renewal of a variance or special exception for the original appeal, the applicant must file a new application, pay all applicable fees in accordance with the fee policy in effect at that time, and then bring the matter before the Board for a full new hearing, as detailed in section 143-6 of these bylaws.
- h) It shall be the responsibility of the Vice Chairman of the Board to maintain a file of decisions rendered by the Board and to review said decisions one hundred eighty days following their adjudication, as determined by the time of the actual decision of the Board. The purpose of said review shall be administrative only, intended only to bring to the attention of the Code Enforcement Officer (including the Building Inspector and/or other equivalent) of the Town of Hudson’s variances, special exceptions or other decisions that are no longer valid as a result of such expiration.
- i) In the case of any request for an extension or renewal of an expired permit, the Chairman shall first try to seat those same members who were sitting for the testimony and deliberation of the original hearing. In the event that any members who were sitting at that time are not available, the Chairman shall try to seat as replacements any members who were in attendance for the original testimony and deliberation. If the original case extended over more than one meeting, attendance at the final session, at which the previous decision was made, shall have a higher priority than attendance at any earlier sessions. In the event that members must be seated who were not in attendance at the earlier hearing(s), the Chairman shall ensure that each such replacement is provided with a copy of all the minutes regarding the hearing(s) and given sufficient opportunity to review those minutes.

- j) Each application for an appeal of an administrative decision or requirement, or for a variance from any town ordinance provision, or for a special exception in accordance with applicable provisions, shall be initiated as follows:
- 1) The request shall be made on forms provided by the Board and available at no cost in the Community Development Office.
 - 2) In each case, the form shall be filled out completely, with all requested information items applicable to that request being supplied, including a list of all principals having a recorded interest in the property (including the names and addresses of all trustees of any trust which is an owner of the property), in accordance with instructions available at the Community Development Department. (The applicant is encouraged and indeed requested to consult with the Zoning Administrator so as to resolve any questions and/or confusions; incomplete forms will not be accepted.)
 - 3) The finished form shall be presented to the Zoning Administrator or any duly authorized representative, together with all requisite fees. The receiving person shall record the date of receipt in the appropriate block and initial that date entry, which shall serve as the determiner for hearing sequence. (Priorities shall be determined by the following criteria, when necessary: date of filing, date of payment check, date of signing by applicant, date of signing by Zoning Administrator (see below) and alphabetical order.) Appeals of a Zoning Administrator's decision shall have highest priority, however, and shall in all cases (once accepted) be processed at the beginning of the next public meeting.
 - 4) Either as part of the aforementioned application submittal or as shortly thereafter as is practicable, the Zoning Administrator shall review the submitted application and sign that form in the appropriate place to confirm that the use, dimensional requirement(s), or other requirement(s) being requested does in fact require a decision by the Board. Pursuant to NH-RSA 676:5, IV, the Zoning Board of Adjustment may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, and other matters that may be required by particular appeals or applications," with any such funds to be paid into an escrow account under the supervision of the Hudson Zoning Administrator.
 - 5) In accordance with mutually agreeable arrangements worked out between the Chairman, the Zoning Administrator, and applicable members of the Zoning Administrator's staff, the submitted applications will be reviewed for satisfactory completion and arranged in sequence for a hearing before the Board. Except for expedited hearings, as defined in Subsection 6, following, all cases will be heard in the sequence of their being filed, in accordance with the previously outlined priority sequence, with the date of the hearing being determined by the number of backlogged cases waiting to be heard. In general, the Board normally prefers to hear a maximum of four cases in a single evening; additional cases will wait in line for the next available meeting. In the event that a significant backlog of accepted applications exists, the Chairman shall request the members of the Board to consider holding one or more special meetings to reduce that backlog.
 - 6) Any applicant who feels that the normal process of hearing all cases in the order by which they are filed, as detailed in the preceding subsection, will constitute an unfair hardship to that applicant, may request an expedited hearing. It will then be necessary for the Chairman to convene a quorum of the Board to deliberate the merits of granting this expedited priority and to come to a majority decision on the question of allowing the expedited hearing. The

expedited hearing shall conform to all normal requirements with respect to public notice, as described in section 143-5 (a through e, preceding. In order to qualify for this special treatment, the application must meet the following special requirements:

- i. The problem or condition for which an appeal is being requested must have been created by some other party than the applicant, beyond the applicant's control.
 - ii. Waiting for a normal sequence hearing must represent a special hardship for the applicant (including such possibilities as risking the value of the property, endangering the loss of significant finances, etc.).
- g) All applications shall be final and no reimbursement of fees shall be made unless the Board determines that no considerable clerical work was performed for the case in question, and that the applicant had requested a withdrawal of their application in a timely manner as described in Section 143-8. There shall be no exceptions to this at all, due to the fact there will have been notification fees paid out for the case to notify the public of the meeting and to notify all applicable abutters.
- h) All forms and revisions used by the Board shall be adopted by resolution.
- i) For any case in which this Board adjudicates a final decision with respect to the request (that is excluding deferments), a copy of the Board's decision statement shall be filed at the Hillsborough County Registry of Deeds as part of the official deed documentation for the subject property, with this filing to be paid for by the applicant as part of the application fee.

143-12 Motions for Reconsideration

Any motion for reconsideration must be made and acted upon at the next regular-meeting following the original decision, with that motion being made by a voting member of the Board and seconded by another voting member of the Board. Any member of the Board who was on the prevailing side of the original vote and who wishes to deliberate the need for such a motion can request the Chairman to call a special meeting within the twenty-day time period following the date of the contested decision, if no regular meeting is scheduled to occur within that period. The Chairman shall honor all such requests. If a motion to reconsider is made by a voting member and seconded by another voting member and then carries by a vote of the Board following such deliberation, the reconsideration will take place at the next scheduled meeting or other mutually agreed date, and the Zoning Administrator will notify the applicant(s) and abutters of the fact by certified mail.