

CHAPTER I: ORGANIZATION

State law establishes certain requirements that should be carefully followed by the municipality in establishing the board of adjustment and by the board in structuring its procedures. The forms and suggestions in this document are provided as guidelines only and should be adapted by each board to suit the local situation.

ESTABLISHING THE BOARD OF ADJUSTMENT

RSA 673:1 Establishment of Local Land Use Boards

- IV. Every zoning ordinance adopted by a local legislative body shall include provisions for the establishment of a zoning board of adjustment. Members of the zoning board of adjustment shall be either elected or appointed, subject to the provisions of RSA 673:3.

BOARD MEMBERS AND ALTERNATE MEMBERS

RSA 673:3 Zoning Board of Adjustment and Building Code Board of Appeals

- I. The zoning board of adjustment shall consist of 5 members. The members of the board shall either be elected in the manner prescribed by RSA 669, or appointed in a manner prescribed by the local legislative body. Each member of the board shall be a resident of the municipality in order to be appointed or elected.
- II. Zoning board of adjustment members who are elected shall be elected for the term provided under RSA 673:5, II. A local legislative body which has previously provided for the appointment of zoning board of adjustment members may rescind that action by majority vote and choose to elect board members. The terms of appointed members of zoning boards of adjustment in municipalities in office on the effective date of an affirmative decision to elect such board members shall not be affected by the decision. However, when the term of each member expires, each new member shall be elected at the next regular municipal election for the term provided under RSA 673:5, II.
- III. A local legislative body which has provided for the election of zoning board of adjustment members may rescind that action by majority vote, in which event members shall thereafter be appointed in a manner prescribed by the local legislative body. The elected board shall, however, continue in existence, and the elected members in office may continue to serve until their successors are appointed and qualified.
- III.(a) A local legislative body's decision to change from an elected to an appointed zoning board of adjustment, or from an appointed to an elected zoning board of adjustment, may be made without amending the zoning ordinance. In a town operating under the town meeting form of government, the decision may be made at any annual or special town meeting. If the town has adopted the official ballot for the election of town officers, the question may be, but is not required to be, placed on the official ballot. If the question is not placed on the official ballot, the question shall be placed in the warrant and shall be voted on as a separate article at the town meeting.
- IV. The building code board of appeals shall consist of 3 or 5 members who shall be appointed in a manner prescribed by the local legislative body; provided, however, that an elected zoning board of adjustment may act as the building code board of appeals pursuant to RSA 673:1, V. Each member of the board shall be a resident of the municipality in order to be appointed.

The term “local land use board” is used throughout this book and is defined by statute (RSA 672:7) as meaning:

“a planning board, historic district commission, inspector of buildings, building code board of appeals, zoning board of adjustment, or other board or commission authorized under RSA 673 established by a local legislative body.”

In 1990, the legislature provided optional election or appointment for boards of adjustment which must be authorized by the local legislative body (council/town meeting). The transition from an appointed to an elected board takes place over time as the term of each appointed member expires. If the election option is rescinded, the elected board continues to serve until their successors are

appointed and qualified.

Communities have the choice as to whether to create an elected or appointed zoning board of adjustment. The statutes contain provisions for how to establish a board using either organizational structure, but only included provisions for how to switch from a previously established elected board to an appointed board. In 2009, the statute was amended to permit and establish the process of switching from an appointed board to an elected board.

RSA 673:5 Terms of Local Land Use Board Members

- II. The term of an elected or appointed local land use board member shall be 3 years. The initial terms of members first appointed or elected to any local land use board shall be staggered so that no more than 3 appointments or elections occur annually in the case of a 7 or 9 member board and no more than 2 appointments or elections occur annually in the case of a 5 member board, except when required to fill vacancies.
- III. The term of office for an appointed local land use board member shall begin on a date established by the appointing authority, or as soon thereafter as the member is qualified, and shall end 3 years after the date so established. If no successor has been appointed and qualified at the expiration of an appointed member's term, the member shall be entitled to remain in office until a successor has been appointed and qualified.

The term of board members is 3 years, although the initial terms are 1, 2 and 3 years to stagger the terms. Subsequent appointment/election is for 3 years with one or two vacancies occurring each year.

In 2010, the statute was amended to require the appointing authority to establish the beginning date of the term of office of an appointed member, or the date shall be when the member is qualified, and the term of office shall end three years after such date. The statute now clarifies that if no successor is appointed, the member is entitled to remain in office until a successor has been appointed and qualified.

As officers of the municipality, members of the zoning board of adjustment should take the oath of office required by [RSA 42:1](#). The municipal records should clearly show dates of the appointment/election and expiration of the terms. Appointments made to fill vacancies on the board should be for the remainder of the terms in accordance with [RSA 673:12](#).

[RSA 673:3](#) requires local residency for membership on the board. Other qualifications could be set by the zoning ordinance. This is sometimes done in larger municipalities where it is felt that a technical background is helpful in administering the ordinance. In many cases, however, setting qualifications for membership might prevent competent citizens from serving on the board.

In general, qualifications to serve on the board of adjustment are the same as those for any other position of trust in a municipality: time, an interest in serving, impartiality, and a willingness to understand the process.

RSA 673:6 Appointment, Number and Terms of Alternate Members

- I.(a) The local legislative body may provide for the appointment of not more than 5 alternate members to any appointed local land use board, who shall be appointed by the appointing authority. The terms of alternate members shall be 3 years.
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- II-a. An elected zoning board of adjustment may appoint 5 alternate members for a term of 3 years each, which shall be staggered in the same manner as elected members pursuant to [RSA 673:5](#), II.

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- V. An alternate member of a local land use board may participate in meetings of the board as a nonvoting member pursuant to rules adopted under RSA 676:1.

The appointment of alternates is strongly recommended to ensure a quorum in the event regular members are disqualified for a particular case or are otherwise unavailable to serve. Alternate members should be encouraged to attend board meetings on a regular basis to become familiar with board procedures. In 2010, the statute was amended (Chapter 270, SB448) to expressly authorize alternate members to participate in meetings of the board as non-voting members “pursuant to rules adopted under RSA 676:1.” (Further clarification of the role of alternates is offered in Appendix A.) If your board has alternate members, it is strongly encouraged to verify the method in which those alternates were established. Has the legislative body (usually town meeting) actually authorized the appointment of alternates? Check the records to make sure. If you are relying on unauthorized alternates to fill in and make decisions, your decisions may not hold up in court.

[RSA 673:7](#) stipulates that appointed or elected planning board members in towns may also serve on any other municipal board or commission, provided that such multiple membership does not result in two planning board members serving on the conservation commission, local governing body or a local land use board as defined by [RSA 672:7](#). In cities, appointed members shall not hold any other municipal office; however, one member may be a member of the zoning board of adjustment, conservation commission or heritage commission, historic district commission, agricultural commission, the housing commission, or all four if such commissions exist in the municipality.

In cities, one appointed planning board member may also be a member of the zoning board of adjustment.

In counties with unincorporated towns or unorganized places, the county commissioners shall determine which members of the planning board, if any, may serve on other municipal boards.

RSA 673:11 Designation of Alternate Members

Whenever a regular member of a local land use board is absent or whenever a regular member disqualifies himself or herself, the chairperson shall designate an alternate, if one is present, to act in the absent member's place; except that only the alternate designated for the city or town council, board of selectmen, or village district commission member shall serve in place of that member.

Alternates should be encouraged to attend all meetings and participate with the board to a limited extent during the public hearing. The board should review their Rules of Procedure to make sure they define how and when an alternate may participate in a meeting of the board. It must be clear to all in attendance who is “on the board” and who is not, so the applicant and abutters know who will be making the decision. An alternate who is activated to fill the seat of an absent or recused member becomes a full voting member for as long as they are activated and can participate in all aspects of the process just as any other full board member.

Unactivated alternates may participate in meetings as nonvoting members. It is our recommendation that the rules of procedure specify the level of participation allowed for an unactivated alternate member and that they not participate with the board during deliberations since they may influence how others may vote but cannot vote themselves.

RSA 673:12 Filling Vacancies in Membership

Vacancies in the membership of a local land use board occurring other than through the expiration of a term of office shall be filled as follows:

- I. For an elected member, by appointment by the remaining board members until the next regular municipal election at which time a successor shall be elected to either fill the unexpired term or start a new term, as appropriate.
- II. For an appointed, ex officio, or alternate member, by the original appointing or designating authority, for the unexpired term.
- III. The chairperson of the local land use board may designate an alternate member of the board to fill the vacancy temporarily until the vacancy is filled in the manner set forth in paragraph I or II. If the vacancy is for an ex officio member, the chairperson may only designate the person who has been appointed to serve as the alternate for the ex officio member.

Alternate members may be temporarily designated to fill a vacant seat until such time as the seat is filled in the normal manner. They can, however, be appointed to fill the vacant seat as a full member, thus relinquishing their position as an alternate, which in turn creates a new vacant alternate position for the appointing authority to fill.

RSA 673:13 Removal of Members

- I. After public hearing, appointed members and alternate members of an appointed local land use board may be removed by the appointing authority upon written findings of inefficiency, neglect of duty, or malfeasance in office.
- II. The board of selectmen may, for any cause enumerated in paragraph I, remove an elected member or alternate member after a public hearing.
- III. The appointing authority or the planning board shall file with the city or town clerk, the village district clerk, or the clerk for the county commissioners, whichever is appropriate, a written statement of reasons for removal under this section.
- IV. The council, selectmen, county commissioners with the approval of the county delegation, or district commissioners may for any cause enumerated in this section remove the members selected by them.

ORGANIZING THE BOARD

RSA 673:8 Organization

Each local land use board shall elect its chairperson from the appointed or elected members and may create other offices as it deems necessary.

RSA 673:9 Term of Chairperson and Officers

- I. The term of every officer and chairperson elected by a local land use board shall be one year. Both the chairperson and officers shall be eligible for reelection.

RSA 673:10 Scheduling of Meetings

- I. Meetings of the heritage commission, the historic district commission, the agricultural commission, the housing commission, the building code board of appeals, and the zoning board of adjustment shall be held at the call of the chairperson and at such other times as the board may determine.
- II. The planning board shall hold at least one regular meeting in each month.
- III. A majority of the membership of a local land use board shall constitute the quorum necessary in order to transact business at any meeting of a local land use board.

The officers, selected by the board, must include a chairperson to conduct meetings and hearings and

be the official spokesperson for the board and may include a vice chairperson to act in the absence of the chairperson and a clerk to keep records, see that proper notice is given, and take care of other administrative details.

Most boards of adjustment find it convenient to establish a regular monthly meeting which can then be modified as needed to accommodate the number of appeals to be heard. However, the zoning board of adjustment is not required to meet regularly as is the planning board.

RULES OF PROCEDURE

RSA 676:1 Method of Adopting Rules of Procedure

Every local land use board shall adopt rules of procedure concerning the method of conducting its business. Rules of procedure shall be adopted at a regular meeting of the board and shall be placed on file with city, town, or village district clerk or clerk for the county commissioners for public inspection. The rules of procedure shall include when and how an alternate may participate in meetings of the land use board.

State law does not specify the content of the rules of procedure to be adopted by a board of adjustment but does require that every board adopt such rules. Perhaps the most important rule, from the public's perspective, is the time period to be established for appeals of administrative decisions under [RSA 676:5, I](#).

Under [RSA 676:1](#), rules of procedure must be adopted by the board at a regular meeting and placed on file with the city, town or village district clerk for public review. The rules of procedure help to organize the work of the board and lets applicants and abutters know what to expect and how the hearing process will be conducted.

(See Appendix A – Suggested Rules of Procedure for Local Boards of Adjustment.)

The board's rules of procedure should cover issues of internal organization and conduct of public business.

- A. Authority**
- B. Officers**
- C. Members and Alternates**
- D. Meetings**
 - 1. Schedule**
 - 2. Quorum**
 - 3. Disqualification**
 - 4. Order of Business**
 - a) Call to order by the chairperson**
 - b) Roll call**
 - c) Minutes of previous meeting**
 - d) Unfinished business**
 - e) Public hearings**
 - f) New business**
 - g) Communications**
 - h) Other business**
 - i) Adjournment**
- E. Application/Decision Process**
 - 1. Filing application**
 - 2. Notification of public hearing**
 - 3. Conducting the hearing**
 - 4. Decision**
 - 5. Voting**
 - 6. Reconsideration by the board**
- F. Records**