

APPENDIX G CLAREMONT ZONING BOARD OF ADJUSTMENT REGULATIONS AND RULES OF PROCEDURE*

Section A. Authority and Purpose.

1. *Authority.* The zoning board of adjustment (“ZBA” or “the Board”) rules of procedure are adopted pursuant to New Hampshire RSA 676:1 and the Claremont Zoning Ordinance, as may be amended from time to time.

2. *Purpose.* These regulations are established to provide rules of procedure for the conduct of business to come before the ZBA. In the event that amendments to state law or regulation may invalidate any provision of these regulations, the invalidated portion of the regulation shall no longer apply.

Section B. Composition, officers and duties.

1. *Members.* The ZBA shall consist of five (5) members appointed by the city council under the provisions of the zoning ordinance and RSA 673:3, one of whom may be a representative from the City Council. Each member shall be a City resident and shall attend each meeting of the Board, unless excused by the chair. Any member unable to attend a meeting or aware of any issue that could result in the member’s disqualification shall notify the chair as soon as possible. Members, including the chair, shall hear all cases presented, participate in the decision-making process, and vote to approve or disapprove all motions under consideration unless a member is absent or disqualified.

2. *Alternates.* Up to five (5) alternate members shall be appointed by the city council under the provisions of the zoning ordinance and RSA 673:3. In the absence or disqualification of a regular member, the chair shall designate an alternate to act in the place of the absent or disqualified member. The alternate designated for the City Council representative, if any, shall serve only in place of the member designated as the City Council representative. When so appointed, an alternate member has the same authority and responsibility as a regular member. Alternates are encouraged to attend all meetings to familiarize themselves with the workings and issues before the Board and stand ready to serve should the need arise.

3. *Officers.* The officers shall be a Chair, Vice-chair, and Clerk. The officers shall be elected annually at the first meeting of each calendar year by a majority vote of the members present at the meeting. Officers so elected shall take office on the day of their election and serve for one (1) year, or until their successors have been elected and have taken office. All officers shall be eligible for re-election. In the event a vacancy occurs in any office, a replacement to serve the remainder of the unexpired term shall be elected by a majority vote of the members present at the next regular meeting. In the event a member is absent for any reason from a meeting during which elections are held, an alternate may be designated by the members then presiding. The duties of the officers shall be as follows:

a. *Chair.* The Chair shall, when present, preside and keep order over all meetings, designate alternates to sit when members are absent or disqualified, call special meetings, assist with the setting of the agenda and grant continuances for good cause shown between meetings.

The Chair may administer oaths and compel the attendance of witnesses. See RSA 673:15 for provisions providing for paying witnesses.

b. *Vice-chair.* The Vice-chair shall, in the absence or disqualification of the Chair, assume all of the duties of the Chair.

c. *Clerk.* The Chair may designate a nonmember Clerk to record the minutes of each meeting.

Section C. Meetings.

1. *Regular meetings.* Regular meetings shall be held at 7:00 p.m. on the first Monday of each month at City Hall; provided, if said date is a holiday recognized by the city, the regular meeting for that month shall be held on the first Tuesday at the same time and place, or at such alternate time and place as may be determined by the Chair. Other meetings may be held at the call of the Chair, as may be required. All meetings are subject to public notice in accordance with RSA 91-A, II.

2. *Quorum.* A quorum for all meetings shall be three (3) members, including alternates as may be designated to sit in place of an absent or disqualified member. The Chair and Clerk will use their best efforts to ensure a full five-member Board is present for the consideration of any appeal. An appeal may be heard and decided by four (4) or three (3) members if the applicant and all persons who appear in opposition to the appeal agree and such agreement shall be recorded in the minutes of the meeting. In the event, as a result of a lack of a quorum or agreement to be heard by fewer than five members, a hearing on a particular case is continued, a decision is delayed until a later meeting, or there is a motion for rehearing, only those members who have been present for all prior hearings in that appeal shall participate in the continuation of that appeal, except by agreement of the applicant and all persons who appear in opposition; and such agreement shall be recorded in the minutes of the meeting.

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

- a. Call to order by the Chair
- b. Attendance
- c. Minutes of the previous meeting
- d. Old Business (including continued public hearings)
- e. New Business (including public hearings on new appeals)
- f. Communications
- g. Other business
- h. Adjournment

4. *Conduct of meetings* All meetings shall be held in accordance with the provisions of RSA 91-A, including both public and non-public sessions.

5. *Minutes* Minutes of all meetings, including names of Board members present and participating, persons appearing, a description of the subject matter and a summary of all matters before the Board at any public hearing, shall be maintained by the Clerk and be made available for public inspection in accordance with RSA 91-A

6. *Conflict of Interest/Disqualification.* No member who is disqualified under the provisions of RSA 673:14 shall sit on any case or participate in that case except as a member of the public. As a member of the public, the disqualified member may participate as fully as any other member of the public. In addition, all members and alternates are subject to the following considerations in determining the existence of a conflict or factors requiring disqualification:

A. Abutters. Anyone owning or leasing land abutting a piece of property which is the subject of an application before the board is disqualified from acting on that application. (Totty v. Grantham Planning Board, 120 NH 390 (1980)).

B. City Code of Conduct. All members shall abide in the performance of their duties in accord with the City's Code of Conduct.

C. Conflict of Interest or Prejudgment. In accordance with RSA 673:14, no member shall participate in deciding or shall sit upon the hearing of any question if that member has a direct personal or pecuniary interest in the outcome which differs from the interests 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.

D. Reasons for disqualification include when a member:

1. Is related to the applicant or any abutter;
2. Has assisted or advised the applicant or any abutter; or,
3. Is biased or prejudiced in any manner or to any degree which would, in the eyes of a reasonable and prudent person, prevent the member from acting impartially with respect to the application before the Board.

E. Reasons for disqualification also include prejudgment which occurs when a member has directly or indirectly taken a position, formed a conclusion, or has prejudged the appeal to be decided by the Board. Prejudgment includes, but is not limited to, a position taken either for or against an appeal expressed at a public meeting, by letter, by ex parte communication, or by comment made in some public forum. Prejudgment does not include questions or statements made by Board members in response to the details of the appeal expressed during the public hearing held on that appeal or during the Board's deliberations.

F. When an uncertainty arises as to whether a member is disqualified in particular circumstances, the Board shall, at the request of that member or another Board member, vote on the question, but such vote shall be advisory and non-binding. Any person with a direct interest in the outcome may voice an objection to a Board member's participation, setting forth specific reasons, and may also request such a vote, but such a request shall be non-binding. Any such request or objection shall be made either prior to or at the commencement of the public hearing, or at such later time as the facts claimed to warrant disqualification first become known. No such vote shall be taken if the member involved steps down voluntarily.

G. If anyone, whether on or off the board, raises the question of prejudgment or conflict of interest on the part of any Board member, and that member is unwilling to voluntarily step down, the remaining members of the Board shall hear any evidence the challenger and the challenged may have; subsequently, the Board, by two-thirds vote, shall decide whether the challenged member may sit. If there is substantial evidence of prejudgment or direct financial interest, the vote should be to require the challenged member to step down.

H. A member who is disqualified shall remove himself/ herself from the Board, and shall sit with the public until such time as the Board has completed its consideration of the application at that meeting. The member may then return to the Board. If as a result of disqualification the Board loses its quorum, then there shall be an adjournment or recess of consideration of the matter until there is a quorum either at the same meeting or the next available meeting.

Section D. Application, notice and scheduling.

1. *Application.*

a. Each application for appeal before the Board shall be made on forms provided by and available from the Clerk and shall be presented to the Clerk, with any applicable fees. The Clerk shall record the date of receipt of the application for appeal over his/her signature. Failure of the applicant to pay the fees assessed may result in a denial of the appeal without a public hearing (RSA 676:7 IV).

b. *New Material.* Any information pertaining to a matter and not submitted at the time of the application for review by the ZBA must be submitted to the ZBA no less than 10 days prior to the ZBA meeting at which the matter will be heard. Failure to submit such additional information may result in the additional information not being considered at the meeting at which the matter is to be heard.

c. Applications for appeal from an administrative decision taken under RSA 676:5 shall be filed within twenty (20) days of the date of the decision appealed.

2. *Notice.* Notice of public hearings on each application for appeal shall be made pursuant to RSA 676:7 as follows:

a. Public notice of a public hearing shall be placed in the Claremont Eagle Times or other newspaper of general circulation in Claremont not less than five (5) days prior to the public hearing (not including the day of the posting or the day of the hearing). The notice shall include the name of the applicant, the description of the property, including the tax map identification, the action desired by the applicant, the applicable provisions of the zoning ordinance, the type of appeal being made and the date, time and place of the hearing. The cost of such notice shall be paid in advance by the applicant. Failure to pay such costs shall constitute valid grounds for the Board to terminate consideration of the application and to deny the appeal without public hearing.

b. Personal notice shall be made by certified mail to the applicant and all abutters and holders of conservation, preservation or agricultural preservation restrictions not less than five (5) days before the date of the hearing. Such notice shall contain the same information as the public notice.

3. *Scheduling.* Hearings on all appeals will be scheduled as follows:

a. A public hearing shall be held within thirty (30) days of receipt by the Board of the notice of appeal. The appeal shall be scheduled for hearing at the next regular meeting of the ZBA unless there is insufficient time to give the required notices. In the event there is insufficient time, the Chair shall call a special meeting to hear the appeal unless the applicant waives, in writing, the thirty-day requirement. In the event of such waiver, the appeal shall be scheduled for hearing at the Board's next regular meeting. In the event there is no such waiver, the applicant shall be required to pay any additional costs for notice and recording for the special meeting.

b. In the event an applicant, for good cause shown, is unable to attend the scheduled public hearing, he/she may request, not less than three (3) business days before the public hearing, that the appeal be rescheduled to the next meeting of the Board. Should such request be made after notices of the public hearing have been given, the applicant shall be required to pay for notices of the continuance, which shall be given by the Clerk in the same manner as the notices of the originally scheduled public hearing were given.

Section E. Public Hearings.

1. *Preliminary matters.* Prior to commencing the public hearing in each case, the chairman shall:

- a. Determine whether all five (5) regular members are present; and, if not, appoint alternate members as may be required so that five (5) members are present to hear the case.
- b. Determine whether any member is disqualified to hear the case. In the event the qualification of any member is in issue and that member does not voluntarily disqualify himself, the chairman shall determine all of the facts and the Board shall then rule on the issue.
- c. If a five (5) member board cannot be constituted, confirm with the applicant that he/she is willing to have the matter heard by less than a full Board.
- d. Determine that the required notices have been given.
- e. Determine that the applicant is present, whether he/she is represented by an attorney or agent.
- f. Read aloud the name of the applicant, the type of appeal and the property or issue that is the subject of the appeal.
- g. Call the roll of the abutters and determine for the record if any are present.

2. *Public Hearing procedures.* To ensure that the necessary evidence is presented to the ZBA in an orderly manner, the following procedures shall be followed:

a. *Representation.* Any party may appear in person or through an agent or attorney. If the applicant does not appear before the Board, written authorization for an agent or attorney to appear on the applicant's behalf must be received by the Board prior to the start of the public hearing.

b. *Decorum*

- i. Members of the Board may ask questions at any point during the testimony, with the permission of the Chair.
- ii. Each person appearing before the Board shall state his/her name and address, as well as his/her interest in the appeal, prior to speaking.
- iii. Any party to the appeal may ask a question of another party in the matter, but must do so through the Chair.

c. *Order of presentation.*

- i. City staff may present information regarding background, the nature of the application, information specific to the subject of the appeal and such other factual information as may assist the Board in its deliberations.
- ii. The applicant shall present evidence to support his/her case and has the burden of proving by a preponderance of the evidence the required elements of his/her appeal. The evidence may include testimony of witnesses, documents, photographs, a view of the property, and such other proof as the Board may find relevant.
- iii. Abutters who may be present, either in support or in opposition to the appeal shall be heard subsequent to the applicant.
- iv. The Chair shall offer to the public, including those who either support or oppose the appeal, but not including those who have appeared as a party or witness, an opportunity to make comments and present evidence, so long as those comments are relevant to the issues of the case. If more than one (1) person appears either in support or in opposition, the Chair shall determine the order of presentation.

v. The applicant shall be allowed to present evidence which rebuts evidence presented by others, but shall not be allowed to restate evidence already presented.

vi. Those persons who oppose the appeal shall also be allowed to present rebuttal evidence in turn, but they shall not be allowed to restate evidence already presented.

d. *Summary.* The Chair shall present a summary, setting forth the facts of the case and claims made for each side.

e. *Decisions.* The Board shall decide all appeals within not more than thirty (30) days after the close of the public hearing and shall approve, approve with conditions, or deny the appeal.

i. The ZBA may, by a majority vote, go into non-public session as may be permitted by RSA 91-A, but all decisions shall be by a vote taken in public session. No appeal shall be granted except by a concurring vote of at least three (3) members.

ii. All decisions by the Board shall include findings of fact on each criteria required by law for the specific appeal. If the appeal is denied, each member who voted for the denial shall state in public and on the record he/her reasons for the denial.

iii. If the ZBA grants an appeal, it may impose such conditions as it determines may be necessary to preserve the spirit of the zoning ordinance and to ensure that the public health, safety and welfare will not be endangered.

iv. A written notice of decision, including conditions, if any, shall be given to the applicant and placed on file for public inspection with the Clerk as required by RSA 676:3. If the appeal is denied, the notice shall include the reasons for the denial. A copy of the notice shall also be given to the planning board, the tax assessor and other City officials as determined by the Board.

Section F. *Reconsideration/Rehearing*

The Board may reconsider its decision to grant or deny an appeal and may grant or deny a motion for rehearing so long as any such request is filed with the Board within the appeal period of the original decision. (74 Cox Street LLC v. City of Nashua, 156 N.H. 228 (2007))

Section G. *General rules.*

1. The ZBA may, pursuant to RSA 676:2, hold joint meetings or hearings with one or more other land use boards and shall in case of such public hearing issue a decision subsequent to such joint public hearing on the subject matter within its jurisdiction.

2. These regulations may be amended, by an affirmative vote of three (3) members, at a regular meeting of the ZBA, provided that such amendment is submitted in writing for discussion at the meeting prior to the meeting at which the vote to amend is taken.

3. These regulations and rules of procedure shall be filed with the Clerk and shall be available to the public during normal business hours.

4. The ZBA shall charge to all applicants such fees as may be necessary to defray its expenses, as approved by the City Council.