

# **BOARD OF ADJUSTMENT RULES AND REGULATIONS**

**for the**

**City of Portsmouth  
New Hampshire**



<b>Adopted:</b>	<b>August 20, 1996</b>
<b>Revised:</b>	<b>April 26, 2005</b>
<b>Revised:</b>	<b>May 18, 2010</b>
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<b>Revised:</b>	<b>September 17, 2013</b>
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<b>Revised</b>	<b>November 19, 2019</b>
<b>Revised</b>	<b>XXXXXXXXXXXXX</b>

# **City of Portsmouth Zoning Board of Adjustment Rules and Regulations**

## **I. Meetings**

Regular meetings of the Board of Adjustment (Board) will be held at a time and date set by the Board at the City Hall or such place as may be provided by the City Manager and which complies with State Statute.

## **II. Time and Date**

1. The yearly schedule of regular monthly meetings and deadlines for submission is published prior to the first of January each year for the upcoming year.
2. The regular meeting time is 7:00 P.M.
3. A complete application received prior to the published deadline will be scheduled for a Public Hearing at the next regular monthly meeting.
4. The time and date of the regular monthly meeting may be changed by majority vote of those Board members present at a meeting.
5. In the case of an excessively lengthy agenda, the Chair may split the agenda which will be reflected in the published legal notice. The second half of the agenda will be scheduled for the following week. In the case of an unexpected lengthy meeting, the Board may at its discretion, adjourn the meeting to an announced time, date and location to complete the published agenda.

## **III. Responsibilities of the Code Official<sup>1</sup>**

1. The Code Official shall inform the Applicant as to the requirements of the Zoning Ordinance and procedures concerning appeals.
2. The Code Official shall provide all information submitted with the application to the Board on or before the scheduled Public Hearing.

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<sup>1</sup>Code Official - Any employee of the City of Portsmouth authorized to administer or enforce the Zoning Ordinance, including but not limited to the Planning Director and the Chief Building Inspector.

#### IV. Applicant's Responsibilities

1. All applications for Variances and Special Exceptions must be submitted to the Code Official prior to the published deadline. Submissions which fail to meet this requirement shall not be considered until the next month's regular meeting. In the case of Appeals from an Administrative Decision, the appeal shall be filed no later than 30 days from the date of the action which is being appealed.
2. An Applicant shall be one of the following:
  - a) The owner of record to the property, or
  - b) The holder of a valid purchase and sales agreement for the purchase of the subject property, or
  - c) The holder of a valid option for the purchase of the subject property.
3. All applications shall include a completed form entitled "City of Portsmouth Board of Adjustment Application" which shall be signed by the owner of record to the property.
4. All applications shall include a written statement explaining how the request complies with the requirements of the Zoning Ordinance as provided in Article 2.
5. It is the obligation of the applicant to submit accurate and adequate plans and exhibits in accordance with the terms of the Zoning Ordinance for all applications for Administrative Appeals, Variances and Special Exceptions.

6. Minimum requirements for adequate plans and exhibits shall include the following, unless waived by the Code Official:

<ul style="list-style-type: none"><li>• Name of Owner(s)</li><li>• Name of Applicant(s)</li><li>• Title of petition (i.e. Variance / Special Exception)</li><li>• Drawings and plans need to be to scale, except that upon request, the code official may permit drawings to be not to scale</li><li>• Labeled photo(s) of existing conditions</li><li>• Building plans and elevations of any <i>proposed</i> structures</li></ul>	<ul style="list-style-type: none"><li>• Site Plan(s) showing existing and proposed conditions including:<ul style="list-style-type: none"><li>- Front, side, and rear setback / yard dimensions (this is the distance from a structure and the lot line)</li><li>- Lot dimensions</li><li>- Abutting street(s) and street names</li><li>- Driveways / accessways</li><li>- Dimensions (size and height) of structures</li><li>- Dimensions and location of parking spaces</li></ul></li></ul>
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7. The Code Official is authorized by the Board of Adjustment to refuse applications which do not meet these minimum requirements.
8. The Code Official may also require additional information and/or exhibits as needed to illustrate the scope of the project.
9. In the case of conversions or renovations to an existing structure, interior floor plans shall be furnished by the applicant.
10. Public Hearings shall not be scheduled, advertised or held until such time as the "minimum requirements for adequate plans" have been submitted. Any application that includes plans or exhibits deemed inadequate or requiring more detailed information shall not be scheduled until such time as adequate plans or exhibits are received.
12. The Board may postpone any application requiring more information prior to any action being taken.
13. The Applicant shall submit one original copy of any plans, exhibits, or supporting documents to the Planning Department in hard copy and an electronic copy (through the online application portal by the specified meeting deadline
14. The Applicant shall provide electronic files in Portable Document Format (PDF) of all submittals and any plans, exhibits or supporting documents shall be combined into one electronic file. An Applicant may request a waiver from this requirement. The request should be made in writing to the Planning Director and should explain why the Applicant is unable to provide electronic files.

15. The Applicant or a designated representative of the applicant must appear before the Board at the time of the public hearing on the application. Remote attendance will be accepted for supporting members of the project team as long as there is an authorized representative present with authority to make binding decisions for the Property Owner.

## V. Fee Schedule

1. All application fees for appeals for a Variance or a Special Exception are set by the City Council.
2. All postage costs for abutter notices and a proportionate share of the advertising of the legal notice shall be paid for by the applicant.

## VI. The Board

1. Procedures and conduct of the Board shall be in accordance with the provisions of State Statutes and the Zoning Ordinance of the City of Portsmouth.
2. The membership is comprised of seven regular members and two alternate members. In the absence of a regular member the alternate member shall have all the powers and duties of a regular member as prescribed by the laws of the State of New Hampshire
3. Annual Meeting – The annual meeting shall be held the first regularly scheduled meeting date in January of each year for the purpose of electing officers and reviewing policy and procedures. At the annual meeting the membership shall elect from among its Regular membership a Chair and Vice-Chair (who in the absence of said Chair shall have all the powers and duties of the Chair as prescribed by the laws of the State of New Hampshire). The concurring vote of four members in attendance at a meeting shall be necessary for the election of the Chair and Vice-Chair. The newly elected Chair and Vice Chair shall become effective at the next regularly scheduled meeting of the Board.
4. Four (4) members of the Board in attendance at a meeting are necessary to form a quorum.
5. An affirmative vote by four (4) members present and voting is necessary to:
  - a) Grant a Variance
  - b) Grant a Special Exception

c) Reverse a decision of the Code Official

6. Granting a request for a rehearing of a Variance or Special Exception or the appeal of a code official requires a majority vote of members present and voting or in the case of a tie vote three (3) affirmative votes shall be required.
7. If a motion to grant a Variance, a Special Exception, or an appeal from a decision of a code official results in a tie vote, the resulting decision is denial, unless any subsequent motion is made that receives at least four (4) affirmative votes. In the event that a motion fails to receive (4) affirmative votes, the Chair will solicit comments for the record from those Board members who voted against a motion to approve so as to document how the request failed to meet all of the criteria necessary to grant it. It is the Chair's determination if there is a deadlock and the request is denied.
8. Whenever a Member makes a motion to grant or deny a Variance, a Special Exception, or an appeal from a decision of a code official, the motion maker shall provide findings of fact supporting the motion. In the event a motion to grant fails to receive four affirmative votes, the Chair shall solicit findings of fact from Members who voted against the Motion to grant the Variance, Special exception, or appeal from a decision of a code official.
9. In a case where the Board has less than 6 voting members present, an applicant who is requesting a variance, special exception, or appeal of the Code Official may request a postponement to the next scheduled public hearing. This shall be considered just cause for granting of a postponement by the Board.
10. Each application shall be considered and acted upon immediately following the close of the Public Hearing.
11. Jury standards relative to conflict of interest questions apply to members voting on an application.
12. A Member may be excused for nonattendance of a meeting or hearing for valid reasons if he or she notifies the Chair prior to the meeting or hearing. Confirmation of anticipated attendance and recusals shall be communicated to the Chair with a minimum of [48 hours] notice. No member shall leave a meeting without permission if his/her presence is necessary to make a quorum.

13. Any Board member who recuses him/her self from the board for any reason on any application should not participate in any fashion with regard to said application, unless the Board member is the applicant or an abutter.
14. Alternate Board member(s) shall sit with all other Board members during the meetings and may participate through the close of the public hearing. After the close of the public hearing, an Alternate shall only participate in petitions when they have been designated to do so by the Chair. When an alternate is required for Board action, the Chair shall appoint one of the two alternates to participate in the hearing if a regular member cannot participate on said item. If an alternate has already been appointed to sit in for a regular member, then the second alternate shall be appointed by the Chair to sit on the board as needed. If an alternate is seated for an item on which no action is taken during that meeting, it shall be the role of the alternate to conclude the review of the item, if continued and presented at a later date, and participate fully in the action of that item.

## VII. Miscellaneous

1. Any application previously presented to the City Council, Planning Board, or Code Official shall include all exhibits, records and history when the application is filed with the Board.
2. The applicant will be allowed to request a postponement of the application provided the applicant can provide just cause for the request otherwise a denial without prejudice will be in order for the Board. This section shall not apply to any application if the city needs to postpone or cancel any meetings. During the meeting, an application may only be withdrawn by the applicant or the applicant's representative after the case has been read into the record but prior to the Board opening the public hearing on the application.

If the application is withdrawn, the applicant will be allowed to resubmit the application which will then be considered a new application to be heard for the first time.

3. In a case where an application is granted a postponement more than once, the application will be re-advertised at the expense of the applicant.
4. The applicant shall be allowed to have only one active application before the Board at any time, including any application for a variance of Special Exception for a property with an application subject to appeal. Additional applications will be rejected by the staff at the time it is submitted for processing.

5. Correspondence
  - a) All correspondence shall be directed to the Chair of the Zoning Board of Adjustment, City Hall, 1 Junkins Avenue, Portsmouth, New Hampshire 03801.
  - b) All documents or communications from the Board shall be signed by the Chair.
  - c) In the absence of the Chair for any reason, the Vice-Chair shall act in his/her place.
6. An annual report shall be prepared by the Chair and submitted to the City Manager in conjunction with the Planning Department.
7. When a previously denied application comes back before the Board, the Board may move to determine that the Board cannot lawfully consider the merits of the application because a material change of circumstances affecting the merits of the application has not occurred and the application is not for a use that materially differs in nature or degree from the previous application. See Fisher v. City of Dover, 120 N.H. 187 (1980).

The burden of proof lies with the applicant to prove otherwise through their application submittal. The Board may decide whether it has jurisdiction to hear an application under this section without soliciting feedback from the public or the applicant. If the Board decides, in its discretion, to solicit feedback on this jurisdictional matter, the Board shall open the public hearing for the limited purposes described in this section. If the Board determines it does have jurisdiction over the application, it shall proceed according to the procedures described in Section VIII, et seq.
8. The Board may elect to take business items out of order for the purpose of addressing requested postponements. When a motion to postpone is made, the motion maker must include the reason for either granting or denying the request.
9. If an applicant submits a request to postpone consideration of an application with at least 2 business days notice, City staff may postpone consideration of the application. If City staff postpones consideration of a noticed application, at the outset of the noticed meeting, the Board shall announce that the City granted the applicant request for a postponement to a date certain.



## VIII. Procedure for Public Hearings

1. Public hearings of the Board shall follow the following procedure:
  - a) Presentation by the applicant or applicant's representative explaining the application and reasons why the Board's approval should be granted based on the applicable criteria.
  - b) Questions by Board members
  - c) Public comment to, for or against the application or proposal
  - d) Chair closes public hearing
  - e) Board discussion on the application if deemed necessary.
  - f) Motion(s) made by a Board member. Motion must be seconded by another Board member before the motion can be considered.
  - g) The motion maker shall address all of the applicable criteria or reasoning relevant to the motion followed by any additional comment by the Board member who seconded the motion
  - h) Discussion on the motion(s) with no further public comment and no additional information from the applicant unless in answer to a question from the Board
  - i) Vote on the motion(s)
2. The Board may impose reasonable time limits on presentations and public comments to the Board. Absent extenuating circumstances, fifteen (15) minutes for the presentation from the applicant and five (5) minutes per person during public comment shall be considered a reasonable time limit. These time limits may be waived upon a vote of the Board.
3. If the public hearing is continued to a subsequent meeting of the Board, the procedure outlined above shall also be followed at the continued hearing.
4. If the public hearing is closed and the application is postponed for more information, the Board may vote to reopen the public hearing and may consider additional information from the public. Additional information requested from the applicant should be outlined in the motion to postpone. If the public hearing is closed and the application is postponed for further discussion by the Board, no additional public comment, written or otherwise, will be considered by the Board.

5. The Board may modify the above procedure for an individual application by a vote of the Board.

#### IX. Electronic or Multimedia Presentations

1. Applicants and members of the public may use PowerPoint, PDF or multimedia presentations in a public hearing, subject to any time limits as specified above. Any such presentation must be submitted to the Planning Department by the specified meeting deadline.
2. Other presentation formats may be permitted during a public hearing subject to prior approval by the Chair.

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