

CITY OF KEENE
NEW HAMPSHIRE

BOARD OF APPEAL

RULES OF PROCEDURE

I. GENERAL RULES

- A. **Authority:** These rules of procedure are adopted by the Authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and Chapter 2, Division 6, of the City Code of Ordinance. The Board of Appeal (“Board”) shall have and shall exercise all of the powers enumerated in RSA 674:34, or as otherwise provided by State statute and City Ordinances.
- B. **Purpose:** The purpose of these rules is to provide guidance to the Board and all persons participating in proceedings held before the Board, and to allow for the orderly and efficient handling of all matters within the jurisdiction of the Board. Proceedings are not to be strictly governed by formal rules of evidence or parliamentary procedure. Instead, these rules are intended so that all parties interested in an application before the Board will be allowed a reasonable opportunity to fully participate and share their views, facts, evidence, and opinions for the Board’s consideration in reaching an appropriate decision. The Board is authorized, by a vote of two-thirds (2/3) of the five (5) member Board, to suspend, supplement, alter, or amend any specific rule or procedure, as may be appropriate in a particular matter, in order to best accomplish this purpose.
- C. **Members and Officers:** All members of the Board, including up to two (2) alternate members, shall be appointed by the Mayor of the City of Keene pursuant to RSA 673:6, and applicable City Ordinance.
- a. Members must reside in the City of Keene and are expected to attend each meeting of the Board to perform their duties and responsibilities. Any member unable to attend a meeting shall notify the Clerk as soon as possible.
 - b. Due to their special knowledge of building and housing issues, members of the Board Appeal shall be appointed to serve on the Housing Standards Board of Appeals established under Division 21, of Chapter 2, of the City Code of Ordinances.
 - c. A Chair shall be elected annually by a majority vote of the Board in the month of January. The Chair shall preside over all meetings and hearings,

appoint such committees as directed by the Board, and shall affix their signature in the name of the Board.

- d. A Vice Chair shall be elected annually by a majority vote of the Board in the month of January. The Vice Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.
 - e. A Clerk (who shall not be a Board member) shall be appointed by the City of Keene Building Official, to maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as the Board may direct by resolution and otherwise assist the Board.
 - f. The Chair and Vice Chair shall serve for a one (1) year term and shall be eligible for re-election and shall continue to serve until annual elections are next held.
- D. **Alternates:** Two (2) alternate members may be appointed by the Mayor of the City of Keene, pursuant to RSA 673:6, and applicable City Ordinance to serve whenever a regular member of the Board is unable to fulfill that member's responsibilities.
- E. **Membership Qualifications:** The Board shall consist of members who are qualified by experience and training to determine appeals pertaining to the State Building Code or State Fire Code.
- F. **Meetings:** Regular meetings shall be held in the Council Chambers, at 3 Washington Street, Keene, New Hampshire, or another location as determined by the Chair, and duly noticed by the Clerk. Other meetings may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.
- a. **Quorum:** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
 - i. The Clerk shall make every effort to ensure that all five (5) members, and one (1) or two (2) alternates, are present for the consideration of any appeal or application.
 - ii. If any regular Board member is absent from any meeting or hearing or disqualifies them self from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.
 - iii. If there are less than five (5) members (including alternates) available, the Clerk shall give the option to the applicant to

proceed or not prior to the scheduled meetings. Should the applicant choose to proceed with less than five (5) members present that shall not solely constitute grounds for a re-hearing should the application be denied. All decisions of the Board shall require the concurrence of at least three (3) members. The option to request to reschedule a meeting of less than five (5) members is not absolute, and the Board may, at its discretion, proceed to consider an application with less than a five (5) member Board.

- b. **Public Hearing Limits:** The Board shall not open a new or continued public hearing after 10:00 p.m.
- c. **Disqualification:** If any member finds it necessary to disqualify (or recuse) themselves from sitting in a particular case, as provided in RSA 673:14, they shall notify the Clerk as soon as possible so that an alternate may be requested to sit in their place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.
 - i. Either the Chair or the member disqualified before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall step down from the Board table during the public hearing and during deliberation on the case.
 - ii. Any interested person appearing in a proceeding, having any information or reason to believe that a Board member should be disqualified, shall notify the Chair as soon as possible and in any event before the commencement of such public hearing.
 - iii. Any Board member or other interested party may, in accordance with RSA 673:14, prior to the commencement of any public hearing, request the Board make the determination as to whether such Board member should be disqualified.
 - iv. In deciding issues of disqualification, the Board shall be guided by RSA 500-A:12, pertaining to jury selection and the requirement that jurors shall be “indifferent,” as well as the City of Keene Code of Ordinances §2-1111, et seq. (“Conflict of Interest”).
- d. **Order of Business:** The order of business for regular meetings shall be as follows:
 - i. Call to order by the Chair

- ii. Roll call by the Chair
- iii. Minutes of previous meeting
- iv. Unfinished business
- v. Public hearing
- vi. New business
- vii. Communications and miscellaneous
- viii. Other business
- ix. Non-public session (if required)
- x. Adjournment

(Note: although this is the usual order of business, the Board may change the order of business after the roll call to accommodate efficiency or the public.)

- e. **Nonpublic Sessions:** All deliberations of the Board shall be held in public. Nonpublic sessions shall be held only as necessary and in strict compliance with the provisions of RSA 91-A:3. The Board may also adjourn, as needed, to meet with its attorney or to consider legal advice in accordance with RSA chapter 91-A.

II. PROCEDURES FOR FILING APPEALS

A. Appeal/Decision:

- a. The original appeal forms may be obtained from either the Clerk or the Community Development Department. Each appeal to the Board shall be made on forms provided by the Board and shall be presented to the Clerk who shall record the date of receipt over their signature. The forms provided by the City must be used; correctness of the information supplied shall be the responsibility of the appealing party at all times.
- b. Regular meetings of the Board shall be held not more than sixty (60) days after the date of the filing of an appeal of an action or decision unless otherwise extended by agreement of the parties to the appeal.
- c. Notice of all meetings shall be given to the public per RSA 91-A:2, II. The appellant shall be provided with notice of the date and the time of the meeting at which the appeal is to be heard at least seven (7) days prior to the meeting date, excluding the mailing date and the date of the meeting, by means of first-class mail sent to the address provided by the appellant.

B. Manner of Taking Appeal:

- a. Any person aggrieved by an order or decision arising under the building code, or arising under the fire code, may, within fifteen (15) days of the date of the order, appeal to the Board.

- b. The applicant shall provide the Clerk with all information requested on the form provided by the Board and any such additional information and data as may be required to advise the Board fully with reference to the application for appeal. Appeals must be made on the proper form.
- c. The appropriate Code Official shall transmit to the Clerk of the Board all documents or relevant information constituting the record of action taken by the Official upon which the appeal is based.
- d. An appeal filed according to the above shall be assigned an appeal number within five (5) days of receipt by the Clerk. Appeals will be heard in the order they are received.
- e. The Clerk of the Board shall schedule the hearing; shall notify all interested parties of the hearing; and shall give notice including the time, date, and place of the meeting, to the interested parties, and to anyone requesting such information. Notice of the meeting will be posted in a public place pursuant to RSA 91-A:2, II.
- f. The appellant may appear on their own behalf at the hearing or may be represented by counsel or by an agent. Both the appellant and the Code Official may speak to the appeal. The Chair may allow other individuals to speak on any appeal before the Board if the Chair determines that it would assist the Board in making its decision. The appellant shall be given an opportunity for final rebuttal.
- g. The Board shall provide written notice to the appellant and to the Code Official of the Board's decision within fourteen (14) days after the hearing decision date.

III. CONDUCT OF PUBLIC HEARINGS

- A. **Conduct:** The conduct of public hearings shall be governed by the following rules unless otherwise directed by the Chair:
 - a. The Chair shall call the meeting to order, introduce the Board members, and review the previous meeting's minutes for corrections and for a motion for adoption.
 - b. The Chair shall read the appeal application and report on how public notice and personal notice were provided and, where appropriate, summarize the legal requirements that must be met by the applicant to obtain the relief being requested.
 - c. Members of the Board may ask questions at any point during testimony.

- d. Each person who appears before the Board shall be required to state their name, address, and indicate if the person is a party to the appeal or an agent or counsel of a party to the appeal.
 - e. Any member of the Board, through the Chair, may request any party to the appeal to speak a second time. The Chair may impose reasonable time restrictions on individuals who wish to speak.
 - f. Any party to the appeal who wants to ask a question of another party to the appeal must do so through the Chair.
 - g. The appellant shall be called first to present the appeal.
 - h. The strict rules of evidence shall not apply, however, the Board may accept any evidence that pertains to the facts of the appeal or how the facts relate to the provisions of the relevant State Code under the appeal.
 - i. After all parties have been afforded a reasonable opportunity to testify, the public hearing shall be declared closed by the Chair and no further testimony will be received from the appellant or any other parties (other than minor technical or procedural information as may be needed from City staff), unless the Board, on its own motion, shall reopen the public hearing to receive additional testimony or information. If the hearing is reopened, all interested parties shall be given the opportunity to speak to the issue requiring the reopening. All deliberations and decisions made by the Board shall continue to be conducted in public. The Board shall, when appropriate, render findings of fact.
 - j. The Board may continue a public hearing to a place, date, and time certain announced at the meeting by the Chair without further public notice.
- B. **Right of Floor:** Board members shall require recognition by the Chair before referring any questions or providing any comment to the appellants, representatives or agents of appellants or others appearing before the Board. Upon being recognized by the Chair, said Board member shall confine his or her questions or comments to the issue at hand, avoid personalities, and refrain from impugning the motives of any other Board member's argument, comment, or vote. All participants in Board hearings shall act respectfully.
- C. **Recess:** The Chair may call a recess for a brief period during any meeting.
- D. **Voting:** Per RSA 674:34, an appeal shall be determined only on the claim by the appellant that the true intent of the relevant State Code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The Board shall have no authority to waive the requirements of the State Building Code or the State Fire Code.

- E. **Further Appeal:** An Appeal of final decisions of the Board shall be made within thirty (30) days of the date of the Board's decision to the State Building Code Review Board in accordance with RSA 155-A:10, IV(e) and RSA 155-A:11-b.
- F. **Re-Hearing Procedures.** Within thirty (30) days after the Board has made a decision on an appeal, any party to the appeal may request a re-hearing before the Board. The Board may order a re-hearing, if, in the Board's sole discretion, it determines that information or evidence submitted to it with the request for re-hearing was not reasonably available at the time of the appeal; and determines that such information and/or evidence has, or may have had, a material impact on the decision by the Board. The Board will determine whether or not to grant a re-hearing within thirty (30) days of the filing of the request. A request for a re-hearing shall not be a prerequisite for any interested party to file an appeal of the Board's final decision with the State Building Code Review Board.
- G. **Records:** The records of the Board shall be kept by the Clerk and made available for public inspection from the Clerk at City Hall, 4th floor, Community Development Department, in accordance with RSA 673:17.
 - a. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made. RSA 676:3.
 - b. Minutes of all meetings including names of Board members, people appearing before the Board, a brief description of the subject matter, and decisions made by the Board shall be open to public inspection within five (5) business days of the public meeting. RSA 91-A:2, II.
 - c. The official record of the Board proceedings shall be the minutes after they have been approved (with corrections, if required) by the Board at a subsequent meeting.

IV. MISCELLANEOUS

- A. **Amendments:** Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the Board provided that such rules or amendments thereto are proposed and discussed at a regularly scheduled meeting at least thirty (30) days prior to the meeting at which the vote is to be taken. and the Rules and any amendments thereto shall be placed on file with the City Clerk and made available for public inspection pursuant to RSA 676:1.

[CERTIFICATE OF ADOPTION ON NEXT PAGE]

CERTIFICATE OF ADOPTION

To the City Clerk of the City of Keene, New Hampshire

Be herby advised that the Board of Appeal of the City of Keene, New Hampshire, being duly constituted and having complies with all of the provisions and requirements of the New Hampshire Revised Statutes Annotated and the Ordinances of the City of Keene, adopt these amended Rules of Procedure.

By the Board of Appeal this ____ day of _____, 2024.

Malcolm Katz, Chair

Originally Adopted: August 26, 2002
Revised: January 25, 2024