

LYMAN ZONING BOARD of ADJUSTMENT MINUTES

August 31, 2022

Call to Order: Chairman Stephen Moscicki called the meeting to order at 6:01 pm.

Roll Call:

Members – Stephen Moscicki, , Greg Harville , Richard Hubbard, Larry Schieman, Mark Draper, Diana McGrath(ZBA Coordinator)

Meeting Minutes:

The minutes for the August 24, 2022 meeting were reviewed. Hubbard made a motion to accept the minutes as written, 2nd by Schieman, all voted in favor.

Old Business:

A brief discussion on alternate candidates to the ZBA took place, as of yet, no one is interested.

A review of the mark “draft” presented by G Harville was read and a discussion of the modifications to the “Rules of Procedure for Board of Adjustment” handout took place. Proposed changes to the procedures are as follows:

Page 1 - OFFICERS

1. A chairperson shall be elected annually by a majority vote of the board in the month of April at the first **regular** meeting of elected members.
2. A vice-chairperson shall be elected annually by a majority vote of the board in the month of **April** at the first **regular** meeting of elected members.
3. A clerk shall be elected annually by a majority vote of the board in the month of **April** at the first **regular** meeting of elected members.

Page 2 – MEETING changes to paragraph 1

1. Regular meetings shall be held at the Lyman Town Hall at 6:00 pm on the second Wednesday of each month. Provided that:
 - a. The chairperson may cancel any such regular meeting if there is no pending matter subject to the appeal powers of the board of adjustment (RSA 674:33), or other relevant business before the board, and

- b. Other meetings may be held on call of the chairperson provided public notice and notice to each member is given at least 24 hours excluding Sundays and legal holidays prior to such meetings.

Add to paragraph 2(b) "No Quorum"

- b. As provided in RSA 676:7-V, in the event that a quorum is not present at a public hearing, the public hearing shall be continued in seven (7) days, at the Lyman Town Hall beginning at 6:00 pm. Notice of the public hearing continuation shall be posted at the Lyman Town Hall and on the town web page (<https://www.lymannh.org>).

Add to "order of business for regular meetings shall be as follows

- f. Deliberation

Page 3, paragraph 1 "Public Notice"

- a. Public notice of public hearings on each application shall be given in the Littleton Courier and shall be posted at the Lyman Town Hall and on the town web-page (<https://www.lymannh.org>),

Page 4, paragraph 4 "Decisions" (remove what is stricken)

Page 5, paragraph 3 "RECORDS"(Corrected reference by deleting RSA91-A:211 and inserting RSA91-A:4

The board agreed to use the "current" version forms / applications from the NH Office of Strategic Initiatives Board of Adjustment Handbook.

Current Board of Adjustment Rules of Procedure
See Attachment

Public Hearing:

Chairman Stephen Moscicki opened the public hearing at 6:15 pm to address the application for a variance submitted by Donovan Family Trust of 2015, for a property located at Dodge Pond Road, Map 216, Lot 32. The following people were present for the hearing:

Applicant: Michael Donovan
 Lisa Donovan

No Abutters present

The hearing was noticed in the Courier, on the Town of Lyman Website, and posted at the Lyman Town Hall. Abutters were noticed via certified mail.

Chairman Moscicki asked the Donovan's to present their case. Michael Donovan presented to the board a "New Hampshire Code of Administrative Rules" "handout which outlined proper use and guidelines for erecting a shed in and around a "shoreland" area. Along with the application for variance M Donovan provided a "supplement" to variance application which outlined in detail the "proposed" use of the shed, description and brief history of the property. M Donovan explained that the proposed 12 X 8 shed is to be set on blocks and that front, side and rear setback requirements are met. That, the property on the west-side and Dodge Pond side, is thickly wooded. Furthermore, the lot size for the proposed shed is similar to existing lot sizes with sheds and will not alter the essential character of properties in the Dodge Pond area.

G. Harville clarified with the applicant that the board will only be voting on Article 7, Section 701 and 702. The board agreed that the application for variance for Article 4, Section 401 was not required after seeking advice from Town Legal.

R. Hubbard noted a discrepancy on size of shed on the Accessory Zoning Permit and Variance application. Applicant confirmed size of shed to be 12' X 8'.

The Board began deliberation on each of the 5 criteria for each variance request:

The application for the following variance in the Lyman Zoning Ordinance: **Article 7, Section 701** was read in its entirety by Chairman Moscicki.

1. Chairman Moscicki asked if granting the variance WOULD or WOULD NOT be contrary to the public interest. The board agreed that granting the variance would not be contrary to public interest.
2. Chairman Moscicki asked if the spirit of the ordinance WOULD or WOULD NOT be observed. The board agreed that granting the variance would not threaten the public health, safety or welfare of Lyman residents in the Dodge Pond area.
3. Chairman Moscicki asked if granting the variance WOULD or WOULD NOT do substantial justice. By granting the variance, the board agreed that there is no benefit to the public that would outweigh the hardship to the applicant.
4. Chairman Moscicki asked if the values of the surrounding properties WOULD or WOULD NOT be diminished. The board agreed that the surrounding lots would not be diminished.
5. Unnecessary Hardships:
 - a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

(i). Chairman Moscicki asked if there IS or IS NOT a fair & substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property. Harville explained that prior to the Town of Lyman enacted zoning, this situation is generally shared equally by all lots is consistent with surrounding lots in the Dodge Pond area and the applicant has proven his point.

(ii). Chairman Moscicki asked the proposed use (is / is not) a reasonable one. The board agreed that use is a reasonable one.

The Board discussed that granting the variance would be similar and consistent with the use of other surrounding lots in similar size, in the area of Dodge Pond. Harville made a motion to approve the applicants request for a variance from article 7, section 701 of the zoning ordinance to permit a shed on land shown on tax map 216 , lot 32 with .58 acres when 2.07 acres is required. 2nd by Mosicke, all voted in favor.

The application for the following variance in the Lyman Zoning Ordinance: **Article 7 Section 702** was read in its entirety by Chairman Moscicki.

1. Chairman Moscicki asked if granting the variance WOULD or WOULD NOT be contrary to the public interest. The board agreed that the request for variance would not alter the essential character of the neighborhood and consistent with other properties in the area.
2. Chairman Moscicki asked if the spirit of the ordinance WOULD or WOULD NOT be observed. The board agreed that granting the variance would not threaten the public health, safety or welfare of Lyman residents.
3. Chairman Moscicki asked if granting the variance WOULD or WOULD NOT do substantial justice. By granting the variance, the board agreed that there is no benefit to the public that would outweigh the hardship to the applicant. By granting the variance, Moscicki stated, it allows the applicant the ability to use the property the way they want.
4. Chairman Moscicki asked if the values of the surrounding properties WOULD or WOULD NOT be diminished. The board agreed that the surrounding lots would not be diminished.
5. Unnecessary Hardships:
 - a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

(i). Chairman Moscicki asked if there IS or IS NOT a fair & substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property. The board agreed that the applicant made his point that the lot is consistent with other lots in the area of Dodge Pond.

(ii). Chairman Moscicki asked if the proposed use (is / is not) a reasonable one. The board agreed the use is a reasonable one.

The Board discussed that granting the variance would be similar to and consistent with the use of other surrounding lots of similar frontage, in the area of Dodge Pond.. Harville made a motion to approve the applicants request for a variance from article 7, section 702 of the zoning ordinance to permit a shed on land shown on tax map 216 , lot 32 with frontage less than 250 feet on a state, town or private road 2nd by Draper, all voted in favor.

Moscicki made a motion to close the public hearing, 2nd by Harville, all voted in favor

New Business:

Harville inquired on setting ZBA regular public meetings for the next three months on the second Wednesday subject to the chairman's discretion. A brief discussion took place. Schieman made a motion to set September 14th , October 12th , and November 9th for the regular meetings, 2nd by Draper, all voted in favor.

Correspondence and Miscellaneous

2021 Update Board of Adjustments Handbook will be available at the next meeting.

Next Meeting Date

September 14, 2022

Adjourn:

Draper motioned to adjourn the meeting at 6:55PM , 2nd by Schieman, all voted in favor.

Approved Date: 9/21/22

Stephen Moscicki

Wynne Schieman

Richard Hubbard

Harville

RULES OF PROCEDURE for BOARD OF ADJUSTMENT

Board of Adjustment Town of Lyman

AUTHORITY

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the zoning ordinance and map of the town of Lyman.

OFFICERS

1. A chairperson shall be elected annually by a majority vote of the board in the month of April at the first **regular** meeting of elected members. The chairperson shall preside over all meetings and hearings, appoint such committees as directed by the board and shall affix his/her signature in the name of the board.
2. A vice -chairperson shall be elected annually by a majority vote of the board in the month of **April March** at the first **regular** meeting of elected members. The vice-chairperson shall preside in the absence of the chairperson and shall have the full powers of the chairman on matters which come before the board during the absence of the chairman.
3. A clerk shall be elected annually by a majority vote of the board in the month of **April March** at the first **regular** meeting of elected members. The clerk shall maintain a record of all meetings, transactions and decisions of the board, and perform such other duties as the board may direct by resolution.
4. All officers shall serve for one year and shall be eligible for re-election.

MEMBERS AND ALTERNATES

1. Up to five alternate members shall be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.
2. Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the chairperson as soon as possible. Members, including the chairperson and all officers, shall participate in the decision making process and vote to approve or disapprove all motions under consideration.

MEETING

1. Regular ~~quarterly~~ meetings shall be held at the Lyman Town Hall at 6:00 pm on the second Wednesday of each ~~of the following months: January, April, July, and October.~~ Provided that:

- a. The chairperson may cancel any such regular meeting if there is no pending matter subject to the appeal powers of the board of adjustment (RSA 674:33), or other relevant business before the board, and
- b. Other meetings may be held on call of the chairperson ~~to address scheduled hearings or any new business~~ provided public notice and notice to each member is given at least 24 hours excluding Sundays and legal holidays prior to such meetings.

2. A quorum for all meetings of the board shall be three (3) members, including alternates sitting in place of members. RSA 674:33, III provides that "...the concurring vote of any three (3) members of the board shall be necessary to take any action on any matter on which it is required to pass." For this reason, the board will make every effort to ensure that a full five member board is present for the consideration of any appeal.

- a. If any regular board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case (see disqualification below), the chairperson 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.
- b. As provided in RSA 676:7-V, in the event that a quorum is not present at a public hearing, the public hearing shall be continued in seven (7) days, at the Lyman Town Hall beginning at 6:00 pm. Notice of the public hearing continuation shall be posted at the Lyman Town Hall and on the town web page (<https://www.lymannh.org>).

3. Disqualification. If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14 he shall notify the chairperson as soon as possible so that an alternate may be requested to sit in his 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 nonbinding. The disqualification shall be announced by either the chairperson or the member disqualifying himself before the beginning of the public hearing on the case. The disqualified member shall absent himself from the board table during the public hearing and during all deliberation on the case.

4. Order of Business

The order of business for regular meetings shall be as follows:

- a. Call to order by the chairperson
- b. Roll call by the clerk
- c. Minutes of previous meeting
- d. Unfinished business
- e. Public hearing
- f. **Deliberation**
- g. New business
- h. Communications and miscellaneous
- i. Other business
- j. Adjournment

(Note: Although this is the usual order of business, the board may wish to hold the hearings immediately after the roll call in order to accommodate the public).

APPLICATION/DECISION

1. Applications

- a. Each application for a hearing before the board shall be made on forms provided by the board and shall be presented to the clerk of the board of adjustment who shall record the date of receipt over his or her signature. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 21 days of the decision. At each meeting, the clerk shall present to the board all applications received by him or her at least 7 days before the date of the meeting.
- b. All forms and revisions prescribed shall be adopted by resolution of the board and shall become part of these rules of procedure.

2. Public Notice

- a. Public notice of public hearings on each application shall be given in the **Littleton Courier** and shall be posted at the Lyman Town Hall and on ~~the town web~~ Web page (<https://www.lymannh.org>), not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made and the date, time and place of the hearing.
- b. Personal notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the planning board, city/town clerk and other panels deemed by the board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.
- c. Costs of all required notices must be paid for, in advance, by the applicant.

3. Public Hearing - The conduct of public hearings shall be governed by the following rules:

- a. The chairperson shall call the hearing in session and ask for the clerk's report on the first case.
- b. The clerk shall read the application and report on how public notice and personal notice were given.
- c. Members of the board may ask questions at any point during testimony.
- d. Each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
- e. Any member of the board, through the chairperson, may request any party to the case to speak a second time.
- f. Any party to the case who wants to ask a question of another party to the case must do so through the chairperson.
- g. The applicant shall be called to present his appeal.
- h. Those appearing in favor of the appeal shall be allowed to speak.
- i. Those in opposition to the appeal shall be allowed to speak.
- j. The applicant and those in favor shall be allowed to speak in rebuttal.
- k. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- l. Any person who wants the board to compel the attendance of a witness shall present his request in writing to the chairperson no later than 3 days prior to the public hearing.
- m. The board of adjustment will hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance and state zoning laws. The chairperson shall present a summary setting forth the facts of the case and the claims made for each side (see Findings of Facts form). Opportunity shall be given for correction from the floor.
- n. The hearing on the appeal shall be declared closed and the next case called up.

4. Decisions: The board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal. Notice of the decision will be made available for public inspection within 5 days (see Ch. 144 ([HBI 163] 2000 with an effective date of 1/1/01), as required by RSA 676:3 and will be sent to the applicant by certified mail. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the planning board, the board of selectmen, town clerk, property tax assessor and other town officials as determined by the board. Notice shall be posted at the Lyman Town Hall. ~~and a notice is sent to the applicant.~~

a. **Voting:** The chairperson may assign the task of drafting a motion to a board member who shall bring a draft motion to the board at the continuation of the deliberative portion of the meeting for the consideration of the board. Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The board must put forth a new motion to affirmatively set forth a decision.

b. **Reconsideration by the Board:** The board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per 74 Cox Street, LLC v. City of Nashua [September 21, 2007]. Motions for Rehearing can only be received in the office of the board during normal business hours. (See Cardinal Development v. Town of Winchester [October 8, 2008].)

c. **Motions for Rehearing:** If the board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

RECORDS

1. The records of the board shall be kept by the clerk and made available for public inspection at the Lyman Town Hall, 65 Parker Hill Rd., Lyman, in accordance with RSA 673:17.

2. Final written decisions will be placed on file and available for public inspection within 5 days after the decision is made. RSA 676:3.

3. Minutes of all meetings including names of board members, persons appearing before the board, and a brief description of the subject matter shall be open to public inspection. RSA 91-A:4 within 5 days of the public meeting. RSA 91-A:211.

AMENDMENTS

These rules of procedure may be amended by a majority vote of the members of the board provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken.

WAIVERS

Any portion of these rules of procedure may be waived in such cases where, in the opinion of the board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

JOINT MEETINGS AND HEARINGS

1. RSA 676:2 provides that the board of adjustment may hold joint meetings or hearings with other "land use boards" including the planning board, the historic district commission, the building code board of appeals, and the inspector of buildings, and that each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.

2. Joint business meetings with any other land use board may be held at any time when called jointly by the chairperson of the two boards.

3. A public hearing on any appeal to the board of adjustment will be held jointly with another board only under the following conditions:

a. The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and

b. If the other board is the planning board, RSA 676:2 requires that the planning board chairman shall chair the joint hearing. If the other board is not the planning board, then the board of adjustment chairperson shall chair the joint hearing; and

c. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and

d. The other board shall concur in these conditions.