Adopted: 06/08/2011

LINCOLN ZONING BOARD OF ADJUSTMENT

RULES of PROCEDURE

ARTICLE I
AUTHORITY

These rules of procedure are adopted under the authority of the laws of the State of New Hampshire, RSA 676:1.

ARTICLE II
NAME

This body shall be known as the Zoning Board of Adjustment (ZBA), and may be referred to in this document as the ZBA.

ARTICLE III
MEMBERSHIP

SECTIONS:

1. Composition:

    a. The Zoning Board of Adjustment (ZBA) shall consist of five (5) members appointed by the Board of Selectmen (BOS), one (1) of whom shall be a Selectman. The terms of members must be staggered so no more than two appointments occur annually, except when required to fill vacancies.

    b. Members must reside in the municipality and they are expected to attend each meeting of the ZBA to exercise their duties and responsibilities. Any member unable to attend a meeting, or finds it necessary to disqualify himself from sitting in a particular case, shall notify the Chairman as soon as possible.

    c. The BOS may appoint three (3) Alternate members who may participate in discussions and deliberations prior to public hearing but not after the close of public hearing and may not vote. If a regular member of the ZBA is unable to vote on a case, then the ZBA Chairman may appoint the Alternate who will vote in the absent members place. If the Selectman is the member unable to vote, then the Selectman's Alternate, as appointed by the BOS will vote.

    d. Members of the ZBA may also serve on any other municipal board or commission as allowed by the laws of the State of New Hampshire.

    e. No member shall participate in deciding, or shall sit upon the hearing, of any question which the ZBA is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens. When uncertainty arises, that member may request the ZBA vote, prior to the public hearing, on whether that member should be disqualified.

2. Term:

The term of office for a ZBA Member or an Alternate shall be three years or as dictated by the BOS, except that the term of office of the Selectman member shall be decided by the BOS in accordance with the laws of the State of New Hampshire.

3. Vacancies:

   Vacancies shall be filled at the time of their occurrences by appointments by the BOS.

4. Duties and Responsibilities:

   a. Members **shall** read and review prepared pertinent material prior to the meeting.

   b. Members must attend meetings on a regular basis.

   c. Members should visit the site of proposals being considered by the ZBA.

   d. Seated members shall participate in the decision making process and vote to approve or disapprove all motions under consideration, except in those cases where the member has a conflict of interest or is disqualified for any cause as found in the laws of the State of New Hampshire, RSA 673.14.

   e. Members shall be familiar with the Master Plan, LUPO, Subdivision Regulations and the enabling legislation of the State of New Hampshire.

5. Removal of members:

   After a public hearing, appointed members and alternate members may be removed by the Board of Selectmen (BOS) upon written findings of inefficiency, neglect of duty, or malfeasance in office. The ZBA may submit written recommendations to the BOS either in support or in opposition to the proposed removal of a member. The BOS shall file with the Zoning Administrator a written statement of reasons for removal.

ARTICLE IV
OFFICERS

SECTIONS:

1. Election, term and vacancies:
   a. The officers of this organization shall be a Chairman, Vice-Chairman, and a Clerk, elected by a majority vote at a meeting of the ZBA occurring in the month of April.

   b. The term of office for each officer shall be one year or until a successor is elected.

   c. Any vacancy of the officers of the organization shall be filled by majority vote of the ZBA at any time of its occurrence.

2. Duties and Responsibilities:

   a. The Chairman shall preside over all meetings and hearings, shall appoint committees as directed by the ZBA, shall affix his or her signature in the name of the ZBA and shall set the agenda for each meeting.

   b. The Vice-Chairman shall preside in the absence of the Chairman and shall have full power of the Chairman on matters, which come before the ZBA during the absence of the Chairman.

   c. In the absence or unavailability of the Chair and the Vice Chair, the members present shall select a Regular Member to exercise the duties of the Chair.

   d. The Zoning Administrator shall perform such duties as the Chairman or the ZBA may direct, and upon direction of the Chairman, shall affix his or her signature in the name of the ZBA. The records of the ZBA shall be kept by the Zoning Administrator and made available for public inspection at the Town Office Building in accordance with statutory requirements. Final written decisions will be placed on file and available for public inspection on the next day that the Town Office Building is open to the public following the date of the ZBA's decision; and a decision shall be available for public inspection no more than five (5) business days after the decision is made. A draft of minutes of all meetings, which draft shall be subject to review and amendment by the ZBA at its next regular meeting, including the names of ZBA members in attendance, persons appearing before the ZBA, and a brief description of the subject matter shall be open to public inspection not more than five (5) business days after the decision is made.

   e. The Zoning Administrator shall give public notice of all public hearings in the manner required by New Hampshire statute. Notice shall include the time and place of the hearing, the name of the applicant, the location of the property including the tax map identification, the type of application being filed, the action desired by the applicant, the type of zoning district in which the property is located and the provision(s) of the Zoning Ordinance concerned. The Zoning Administrator shall notify the applicant and every abutter by certified mail. The Zoning Administrator shall post public notices of all meetings in the Town Office Building, on the Town of Lincoln website and in a newspaper of general circulation before the date of the hearing. All required application costs must be paid for, in advance, by the applicant.

   f. A public hearing on an application must be scheduled within thirty (30) days of the receipt of the application absent a written waiver of this requirement by the applicant. The Zoning Administrator is required to verify that payment of necessary fees has been received by the Town of Lincoln before consideration of an agenda item at a public hearing.

   g. The Zoning Administrator shall mail a copy of the decision of the Zoning Board of Adjustment granting or denying an application to the applicant not more than five (5) business days after the ZBA's decision; and the Zoning Administrator

shall also notify the Town Council, the Building Inspector and the Planning Board of the decision.

ARTICLE IV
MEETINGS

SECTIONS:

1. Time and Place:

   Regular meetings of the ZBA shall be held at the call of the Chairperson and at such other times as the board may determine. The Chairperson or Zoning Administrator may schedule workshop sessions.

2. Notification of meetings:

   a. Notice of all hearings, meetings and the agenda shall be posted in accordance with the laws of the State of New Hampshire.

   b. Agenda and basic information necessary for attending to the business at hand shall be distributed to the members prior to or at the start of each meeting.

3. Change of Meetings:

   a. The time and place of a future meeting may be changed, postponed and/or cancelled by the Chairman if requested by an affirmative vote of a quorum of the ZBA provided absent members are notified of the change.

   b. Special meetings may be called by the Chair, Vice Chair or at the request of three (3) members of the ZBA with public notice specifying the purpose of the meeting and at least forty-eight (48) hours notice to members.

4. Quorum:

   A quorum for all meetings of the ZBA shall be three members, including alternates sitting in place of members.

   a. The chairman shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.

   b. If any regular board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the chairman 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 ZBA while so sitting.

   c. If there are less than five members (including alternates) present, the Chair shall give the choice to the applicant to proceed, or have the hearing continued until five (5) members can be present to hear the appeal. Should the applicant choose to proceed with less than five members present that shall not solely constitute grounds for a rehearing should the application fail. RSA 674:33 III

5. Voting procedures:

   Decisions shall be made by majority of those members present and voting.

6. General conduct of meetings:

   a. The Chairman, with the concurrence of the ZBA, shall establish the procedure and order of business at each meeting and each hearing.

   b. A part of each regular meeting shall be devoted to public comment.

   c. A disqualified member shall absent himself from the ZBA table during the public hearing, and during all deliberations on the case. The disqualification shall be announced by the member or the Chairman before the beginning of the public hearing on the case.

   d. The ZBA may vote to continue the hearing of an application to allow members an opportunity to perform a site visit. If more than two members shall visit the site simultaneously, it is considered a public meeting, and public notice is required. Site visits must be conducted according to state law.

   e. Any non-public Executive session must be conducted in accordance with RSA 91-A:3.

7. Minutes of meetings:

   a. A record of those present and of action taken at all meetings shall be kept. All votes shall be recorded, noting those in favor and those opposed to the motion.

   b. Minority opinions shall be recorded at the discretion of the Chairman or by majority vote of the ZBA.

8. Records:

   Records of all meetings, transactions and decisions of the ZBA shall be maintained in the offices of the Town of Lincoln.

   Recordings of ZBA meetings conducted in accordance with state law are permitted. However, the ZBA asks that the recorder notify the Chairman at the start of the meeting of any such recording as a courtesy to the audience.

   Town staff may record ZBA meetings to assist them in transcribing the official Meeting Minutes. However, upon approval of the meeting minutes, any recordings made will be deleted.

9. Order of Proceedings at Regular Meetings:
   a. Call to Order
   b. Quorum Check
   c. Seating of Alternates
   d. Citizens Forum

e. Review of the minutes of the previous meeting, motions to amend the minutes, and if any, approval of the minutes.
f. Hearing of Cases
    a. Post-decision motions including Motions for Rehearing
    b. Continued hearings
    c. Tabled applications scheduled for hearing
    d. New applications for appeal, variance, special exception or equitable waiver
g. Communications to the Zoning Board of Adjustment
h. Reports of Committees
i. Adjournment

10. The Conduct of Public Hearings:

a. The Chairman shall call the hearing into session, and identify the owner of record, applicant, and/or agent. **If an agent is appearing before the ZBA and the applicant is not present at the meeting, the ZBA must have written authorization from the applicant stating that the agent has been appointed to represent the applicant at the hearing.** If neither the owner of record, the applicant, nor a properly authorized agent is present at the hearing without a formal request for postponement provided to the ZBA Chairperson or Zoning Administrator, the ZBA may vote to request that the applicant re-file with the ZBA an application for a new hearing, and the applicant will be responsible to pay administrative and public notice fees associated with the change of hearing date, including providing a new current abutter list and fees for notification of abutters of the change.

b. After discussion, and/or upon a motion by a member, the Chairman shall entertain a vote by the ZBA to dismiss with prejudice by a majority vote an application on the grounds that the application is similar to an application that was previously denied by the ZBA unless:
    1. There has been a material change in circumstances since the previous denial of the application; or
    2. The application is materially different from the previously denied application.

c. Regular members, alternate members and the Zoning Administrator may ask questions at any point during the presentation and during all testimony.

d. After the presentation, any abutter or any person with a direct interest in the matter shall testify in person or in writing. Other persons may testify as permitted by the ZBA at each hearing. Testimony given at hearing shall be subject to the following procedure:
    1. Each person who speaks shall be required to state his/her name and address and indicate whether he/she is a party to the matter or an agent, counsel to a party to the matter;

2. The Chairman shall call the public hearing open. Upon no further public comments The Chairman shall close the public hearing.
3. Other parties, such as representatives of Town Departments and other Town Boards who have an interest in the application shall be allowed to present their comments in person or in writing;
4. All written statements shall be read into the record by The Chairman or such other member of the ZBA as The Chairman may appoint;
5. The owner, applicant or agent presenting the application may give rebuttal testimony and a summation.

e. Applications are presented in the order in which they are listed in the public notice for the hearing; however, the ZBA, in its discretion, may decide by majority vote, to hear, deliberate upon and/or decide applications in a different order.

f. The Chairman shall indicate whether the hearing of an application is closed, or adjourned (continued) pending the submission of additional material or information or the correction of noted deficiencies. In the case of a continuance, additional notice is not required if the date, time, and place of the continuation is made known at the adjournment.

g. After the closing of hearing of all pending applications, the ZBA will begin public deliberations. After deliberations, The Chairman shall entertain a motion from members of the Board for approval or denial of the application. All motions shall include findings of fact in support of the ZBA's determination. The Chairman shall also entertain motions for any conditions imposed upon the granting of an application or motions to defer the ZBA's decision. The Chairman shall then call for a vote of the seated members. A majority vote shall carry the motion. On an application for a variance, the majority must vote in favor on each of the five criteria in order for the motion to pass.

11. Standing Orders

The ZBA may vote to amend the Rules of Procedure by adopting and incorporating one or more Standing Orders as an addendum to the Rules of Procedure. Any application for a variance, special exception, administrative appeal or equitable waiver granted by the Zoning Board of Adjustment of shall be subject to such Standing Orders. The Zoning Board of Adjustment, in voting on an application, may approve a motion to waive such Standing Orders as the Zoning Board of Adjustment may deem appropriate.

ARTICLE V
APPLICATIONS FOR HEARING

SECTION 1. APPLICATION FORMS

Each application for an appeal from the decision of an administrative official, a variance, a special exception, or an equitable *waiver* shall be made in writing on the forms provided by the ZBA and shall be presented to The Chair of the ZBA who shall record the date of receipt over

her/his signature. All forms prescribed herein and revisions of such forms shall be adopted by resolution of the ZBA.

The applicant shall provide the Zoning Administrator with all information requested by the form provided by the ZBA, and any such additional information and data as may be required to apprise the ZBA fully of the nature of the application and of relief requested, whether or not such information is expressly called for by the form. No applications or appeals will be considered by the ZBA unless it is made on the form required, including the name of the owner and the name of the applicant, the location of the property including the tax map identification, the type of application being filed, the action desired by the applicant, the type of zoning district in which the property is located and the provision(s) of the Zoning Ordinance concerned. In addition, scale drawings with accurate measurements and dimensions of the subject area must be submitted with the application. Where setback is in issue, the applicant may be required to submit a certified plot plan showing the dimensions of the subject area.

SECTION 2. APPLICATION FILING DEADLINES

Appeals from an administrative decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision except when the ZBA may vote to extend such appeal period for good cause shown and when the rights of interested parties will not be unduly prejudiced.

Scheduled applicants wishing a postponement must notify the office of the Zoning Administrator within seven (7) working days before the hearing and the applicant will be responsible to pay administrative and public notice fees again, and provide a current abutter list and pay fees for notification of abutters of the change in date of the hearing.

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ARTICLE VI
POWERS and DUTIES

The ZBA shall have the following powers and duties:

SECTION 1. ADMINSTRATIVE APPEALS

The ZBA shall hear and decide appeals if it is alleged there is error in any order, requirement, or decision, or determination made by an administrative official in the enforcement of any Zoning Ordinance with regard to the terms of the Zoning Ordinance or any construction, interpretation or application of the terms of the Zoning Ordinance implicated in the decision under appeal.

The term "administrative official" as used in this Section means any official or board with responsibility for issuing permits or certificates under the Zoning Ordinance, or for enforcing the ordinance, including, without limitation, the Zoning Administrator, and the Planning Board.

Appeals from the Planning Board may be heard by the ZBA *if* the Planning Board, in the exercise of its subdivision or site plan review powers, makes a decision or determination which is based upon the terms of the Zoning Ordinance, or upon any construction, interpretation or application of the Zoning Ordinance, which would be appealable to the ZBA as if it had been made by an administrative official.

The concurring vote of 3 members of the ZBA shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

In exercising its powers in such appeals, the ZBA may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken; and

SECTION 2. VARIANCE

Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;
(B) The spirit of the ordinance is observed;
(C) Substantial justice is done;
(D) The values of surrounding properties are not diminished; and
(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(I) "Unnecessary hardship" means that owing to special conditions of the property that distinguish it from other properties in the area:

(a.) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(b.) The proposed use is a reasonable one.

(II) If the criteria in subparagraph (I) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (E) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance

SECTION 3. SPECIAL EXCEPTION

The ZBA may authorize special exceptions to the terms of the Zoning Ordinance. The ZBA may grant such special exceptions in appropriate cases and subject to appropriate conditions so as to be in harmony with the general purpose and intent of the Zoning Ordinance. If the ZBA finds that all the requirements of the Zoning Ordinance are met, the special exception, subject to any conditions ordered by the Board, shall be granted. If the applicant does not demonstrate that each of the requirements are met, the ZBA shall deny the special exception. The ZBA may attach conditions to the granting of a special exception as may be determined to be appropriate to mitigate the impact of the proposed use on the surrounding properties and to protect the health and welfare of the Town and its residents.

SECTION 4. EQUITABLE WAIVER

When a lot or any other division of land, or structure thereupon, is discovered to be in violation of Zoning Ordinances, the ZBA shall grant an equitable waiver only if the board makes all of the following findings as more particularly provided in RSA 674:33-a:

A. The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed.

B. The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement.

C. The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

D. Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected.

E. **OR**, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected.

ARTICLE VII
REQUESTS FOR RECONSIDERATION and/or REHEARING

SECTION 1. GROUNDS

A person directly affected by a decision of the ZBA may file a written request for reconsideration and/or rehearing with the ZBA to provide the ZBA with the opportunity to correct any errors it may have made in its original decision. Grounds for reconsideration and/or rehearing may include, but are not limited to, new evidence, additional legal arguments or evidence or law that was misapprehended or overlooked by the ZBA in its original decision.

SECTION 2. TIME LIMITS

A request for reconsideration or rehearing must be filed by the person aggrieved by the ZBA's decision within thirty (30) days of the ZBA's decision. The 30-day time period shall be counted in calendar days beginning with the date following the date upon which the ZBA voted to approve or to disapprove the application. Within thirty (30) days of the timely filing of a request for reconsideration or rehearing, the ZBA, in a public session, shall vote to grant or deny the request for reconsideration or rehearing, or to suspend its earlier decision for further consideration.

SECTION 3. DECISIONS

If the ZBA votes to grant a request for reconsideration or rehearing, the matter shall be scheduled for hearing at the next regularly scheduled meeting of the ZBA. At the conclusion of such hearing, the ZBA shall deliberate and vote on its decision to affirm, modify, condition or reverse its original decision. The ZBA may also vote, in its discretion, to continue the hearing for further study or to obtain additional information before making a final decision.

SECTION 4. NOTICE OF DECISIONS

Final written decisions will be placed on file and available for public inspection on the next day that the Town Offices are open to the public following the date of the ZBA's decision; and a decision shall be available for public inspection five (5) business days after the decision is made. A draft of minutes of all meetings, which draft shall be subject to review and amendment by the ZBA at its next regular meeting, including the names of ZBA members in attendance, persons appearing before the ZBA, and a brief description of the subject matter shall be open to public inspection five (5) business days after the public meeting.

ARTICLE VIII
RECORDS of the ZONING BOARD of ADJUSTMENT

All records of the ZBA shall be public records. The records of the ZBA shall be kept by the Zoning Administrator and made available for public inspection at the Town Office Building in accordance with statutory requirements. The Zoning Administrator to the ZBA shall keep a full and accurate record of the proceedings of all meetings by transcribed minutes. Printed minutes shall be permanently preserved.

Final written decisions of the ZBA will be placed on file and available for public inspection on the next day that the Town Offices are open to the public following the date of the ZBA's decision; and a decision shall be available for public inspection five (5) business days after the decision is made. A draft of minutes of all meetings, which draft shall be subject to review and amendment by the ZBA at its next regular meeting, including the names of ZBA members in attendance, persons appearing before the ZBA, and a brief description of the subject matter shall be open to public inspection not more than five (5) business days after the public meeting.

ARTICLE VIIII
RULES of the ZONING BOARD of ADJUSTMENT

The ZBA shall adopt rules and regulations governing meetings, hearings, application procedures, fees, and other matters for the proper functioning of the Board. The Rules of the Board shall be a public record and shall be filed at the Town Office Building and shall be available for public inspection. At any meeting, the Rules of the ZBA may be waived, amended or revoked by affirmative vote of 4/5ths of the sitting members of the Board. Whenever the Rules of the ZBA are, or may become, inconsistent with State laws relating to zoning and/or the Zoning Ordinance of the Town of Lincoln, such State Laws or Ordinances shall govern.

ARTICLE IX
GENERAL RULES

COMMITTEES:

Committees shall be appointed by the Chairman as required by the ZBA; membership of committees need not be limited to members of the ZBA.

OPERATING FUNDS:

Funds for the conduct of business of the ZBA shall come from the revenues of the Town of Lincoln and from other available sources as determined by the Selectmen.

AMENDMENTS:

The Rules of Procedure may be amended by majority vote at any duly notified meeting of the Board, provided the purposed amendments are read at one meeting preceding the vote.

VALIDITY:

If any portion of these Rules of Procedure shall be held to be invalid for any reason by any court, such holding shall not invalidate in any manner any other provisions contained herein.

LEGALITY:

If any portion of these By-Laws shall be found to be in conflict with the laws of the State of New Hampshire the State statute shall prevail.

ZONING BOARD OF ADJUSTMENT
ADOPTION OF RULES OF PROCEDURE

The Zoning Board of Adjustment hereby adopts Rules of Procedure for the Lincoln New Hampshire Zoning Board of Adjustment on 6/8/2011.

Signed by:
Chairman Paul Boardman

Vice-Chairman_____

Date of Signature by Zoning Board of Adjustment – 6/8/2011 2011
Date filed with Town Clerk – 6/9/ 2011
NOTE: The document with original signatures is on file with the Town Clerk.