RULES OF PROCEDURE
SWANZEY ZONING BOARD OF ADJUSTMENT

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 Swanzey.

OFFICERS

1. The Chair shall be a regular member elected annually by a majority vote of the Board (including alternate members) in the month of March. 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.

2. The Vice-Chair shall be a regular member elected annually by a majority vote of the Board (including alternate members) in the month of March. The Vice-Chair shall preside in 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.

3. All officers shall serve for one year and shall be eligible for re-election.

ALTERNATE MEMBERS

1. Up to five alternate members shall be appointed by the elected Zoning Board of Adjustment, to serve whenever a regular member of the board is unable to fulfill their responsibilities. Alternate members shall serve a term of three years in accordance with RSA 673:6. When alternate member vacancies are posted, registered Swanzey voters seeking to be appointed as an alternate member shall submit their letter of interest to the Town Planner or designee. The voting on the appointment of alternate members shall occur at a regular meeting of the Board.

2. Alternate members 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 their responsibilities.

3. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may

participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other board members, the applicant, abutters and the public.

4. During deliberations, alternate members may participate in the discussions. Alternates shall not be allowed to make motions, second motions, or vote unless seated in the place of a regular member.

5. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate and participate in making motions and voting.

6. At all times, the chair shall fully inform the public on the status of any alternate present and identify the members who shall be voting on the application.

CLERK

The Clerk, who shall not be a Board member, shall maintain a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct. The Clerk is appointed by the Board of Selectmen.

MEETINGS

1. Regular Board of Adjustment meetings are held on the third Monday of every month at Whitcomb Hall, 17 Main Street in West Swanzey at 7:00 p.m., except in January and February, when the meeting will be held on the second Monday. Public Notice must be provided as required by RSA Chapter 91-A. If an emergency situation arises wherein action is required prior to the next scheduled meeting, the necessity for calling a special meeting will be determined by the Chair or in their absence, the Vice-Chair.

2. A quorum for all meetings of the Board shall be three members, including alternates sitting in the place of members as stated in RSA 673:11. RSA 674:33,III provides that "... the concurring vote of 3 members of the Board 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." 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. In the event it is not feasible to constitute a 5-member Board, the Chair shall, prior to the commencement of any proceeding, allow the applicant the opportunity to elect to either proceed with the Board then sitting, or postpone the hearing. If the applicant elects to postpone the hearing, the Board will announce the time, date, and location of the continued hearing. 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.

b. If any regular Board member is absent from any meeting or hearing, or disqualifies themself from sitting on a particular case, the Chair shall designate one of the alternate members to sit in the place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting. Alternates appointed in absence of a regular member, and participating in a public hearing on an appeal, shall retain the seat of the regular member when Board discussions and decisions pertaining to that appeal take place.

c. If the Chair or Vice-Chair are both unable to serve due to absence or disqualification, the remaining Board members shall elect an alternate Chair to serve until the Chair or Vice-Chair can resume the duties of the Chair.

3. If any member finds it necessary to disqualify themself from sitting in a particular case, as provided in RSA 673:14, they shall notify the Chair 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.

a. To assist a member in determining whether or not they should recuse themselves, Board members should review the following questions to determine qualification. These questions include those that are asked of potential jurors to determine qualification (RSA 500-A:12). This list is not meant to be exhaustive and Board members should consider other potential conflicts of issue that may arise. In reviewing each case, Board members should consider whether they:

i. Expect to gain or lose upon the disposition of the case;
ii. Are related to either interested party;
iii. Have advised or assisted the applicant or any interested party;

iv. Have directly or indirectly given an opinion or formed an opinion;

v. Are employed by or employ any party in the case;

vi. Are prejudiced to any degree regarding the case;

vii. Are an abutter to the property for which an appeal has been submitted;

b. The disqualification shall be announced by either the Chair or the member disqualifying themself before the beginning of the public hearing on the case. The disqualified member shall absent themself from the Board table during the public hearing and during all deliberation on the case.

4. Ex Parte Communications:

i. Board members shall avoid ex parte communications with the applicant or any person interested in the application. In the event that ex parte contact occurs, Board members shall disclose the nature and date of the communication at the beginning of the public hearing.

ii. Board members shall not seek input or advice from any source regarding the application outside of the public hearing process.

iii. Applicants and interested parties should direct questions regarding the process to the Town Planner or designee. If an applicant or interested party contacts a Board member, the member should refer that person to the Town Planner or designee, or advise the person to submit information to the Board in writing.

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

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

6. It shall be the policy of the Zoning Board of Adjustment not to commence new public hearings after 9:00 p.m. This policy may be temporarily suspended upon the majority vote of the Board members present (including alternates).

a. Meetings will adjourn at 10:00 p.m. This policy may be temporarily suspended upon the majority vote of the Board members present (including alternates).

APPLICATIONS/DECISIONS

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 Town Planner or designee who shall record the date of receipt.

b. Appeals from an administrative decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision. The date the decision was rendered shall not be counted in the 30 day period. If the 30th day falls on a Saturday, Sunday or Town holiday, the appeal shall be filed no later than the last regular business day preceding the Saturday, Sunday or Town holiday.

c. No application to the Zoning Board of Adjustment will be processed unless it is received by the Town Planner or designee at least 14 days before the date of the meeting.

d. If the application refers to any case law, statute, or administrative rule, copies of the same must be affixed to the application at the time of submission.

e. A completed application shall include all fees for notices and any other fees assessed by the Board under the provisions of RSA 675:5, IV

2. Public Notice.

a. Public Notice of public hearings on each application shall be given in the Keene Sentinel and shall be posted at the West Swanzey and Swanzey Post Offices, the Town Office and the Town's website 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.

c. Fees for certified notices and publication in the Keene Sentinel must be paid by the applicant prior to the public hearing. The Board will not hear the application if fees have not been paid prior to the public hearing. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration and to deny appeal without hearing.

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

a. The Chair shall call the hearing in session and ask for the Town Planner or designee's report on the first case.

b. The Town Planner or designee shall read the notice of application and report on how public notice and personal notice were given. The Town Planner or designee will disclose the location and description of the subject property by use of tax maps, slides or photographs.

c. Members of the Board may ask questions at any point in the testimony.

d. Each person who appears shall be required to state their name and address and indicate whether they are a party to the case or an agent or counsel of any party of the case.

e. The Chair shall control the conduct of the hearing and may impose reasonable limitations upon the number of times and the length of time any person may speak so long as everyone with a legitimate interest is given a reasonable opportunity to state their views and present evidence.

f. Anyone who wants to ask a question regarding the case must do so through the Chair.

g. The applicant shall be called to present their appeal and those appearing in favor of it will be allowed to speak.

h. Those in opposition to the appeal shall be allowed to speak.

i. The applicant and those in favor of the appeal shall be allowed to speak in rebuttal.

j. Those in opposition to the appeal shall be allowed to speak in rebuttal.

k. Upon filing any application, the owner of the affected land implicitly consents to a site visit conducted by the Board (should the Board determine that a site visit is necessary). The site visit shall be conducted as part of the public hearing and shall be open to all interested parties. Date and time of any site visit will be announced during the public hearing. Additional written notice of any site visit to the applicant, abutters and the public shall not be required.

l. 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 town zoning ordinance and state zoning law.

m. After all interested parties have been given a reasonable opportunity to present their evidence, the Chair shall present a summary setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor.

n. The Chair shall declare the public hearing closed. After the close of the public hearing, the Board shall discuss and act upon the application. The public shall not be permitted to participate in the Board's deliberations, but the Chair may direct questions to members of the public and receive answers during the Board's deliberations. Except as provided in the right-to-know law (RSA 91-A), the deliberations of the Board shall be held in open meeting where the public can hear.

4. Decision. The Board shall strive to decide all cases within thirty-five (35) days after the close of the public hearing. The Board shall issue a final written decision which either approves or disapproves the application. Whenever the Board votes to approve or disapprove an application or denies a motion for rehearing, the minutes of the meeting at which such vote is taken, including the written decision containing the reasons therefore, shall be placed on file in the Land Use Office and shall be made available for public inspection in accordance with RSA 676:3.

5. Voting. Should a motion result in a tie vote or not receive the necessary three (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 and it must receive the necessary three (3) votes.

REQUEST FOR REHEARING

1. If possible, the Chair will seat those members who were seated during the underlying hearing. Any member, whether they were present or not present during the underlying hearing, can be seated upon recitation that they have reviewed the underlying application, minutes, the Request for Rehearing and any other materials germane to the application.

2. The Chair shall inform the Board members, the applicant and the audience that while this is a public meeting, it is not a public hearing. Comments from the applicant, their agent and the public will not be permitted.

3. The Chair shall ask if any Board members have any questions or need clarification on any points raised in the Request for Rehearing. The Board will not review the Request for Rehearing point by point, unless so desired by the Board.

4. Should Board members have specific questions, they may address them to the appropriate party through the Chair.

5. If the Request for Rehearing is granted, it shall be the responsibility of the party who requested the rehearing to pay the applicable fees for certified notices and publication in the Keene Sentinel. The fees must be paid by the party who requested the rehearing prior to the public hearing. The Board will not hear the application if fees have not been paid prior to the public hearing. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration and to deny appeal without hearing.

MISCELLANEOUS

1. Records. The records of the Board shall be kept by the Land Use Office and made available for public inspection at the Swanzey Town Office in accordance with statutory requirements.

2. Joint Meetings and Hearings. Joint meetings with other town boards shall be held under the provisions of 676:2.

3. Amendments. These rules of procedure may be amended by a majority vote of the Board members present (including alternates) provided that such amendment is discussed at a meeting of the Zoning Board of Adjustment, and following said discussion the text of the proposed amendment is posted in at least three public places in Town at least ten (10) days preceding the meeting when the vote is to be taken. At a minimum, the Board shall review the rules of procedure every three (3) years to determine if any amendments are necessary.

4. Waivers. Any non-statutory portion of these rules of procedure may be waived in such cases where, upon the vote of the Board, strict conformity would pose a practical difficulty to the applicant and a waiver would not be contrary to the spirit and intent of the rules.

We hereby attest that this is a true copy of the Rules of Procedure as amended and adopted by the Swanzey Board of Adjustment on August 15, 2022.