

Zoning Board of Adjustments Seeks New Alternate Members

To cover the absence of a regular member

Steven Bowers, Andover ZBA Chair

The Andover Zoning Board of Adjustments is looking for two new alternate members. While we have a full board of regular members at present, there are no alternates to cover for the absence of a regular member, or to step up if a member must step down.

Experience Not Required

While experience in various areas of town government, especially zoning laws, would be helpful, it is not necessary. In fact, the ZBA is a great way to be introduced to town governance. It is limited in scope, so picking up on how it works through meeting attendance is possible. The current membership is knowledgeable and willing to prepare alternate members for a future role.

The time commitment is minimal, as the board meets once per month on the third Tuesday of the month, usually for an hour or so, although complex applications can take longer to work through. ZBA membership is appointed, not elected, so there is no need to run a campaign to get on board.

I am the current Chair of the ZBA, and ten short months ago I knew nothing about its function. After offering to help out in town, I was asked to consider the ZBA, even with no experience. Fortunately, the other four members are either long-time board members (past or present) or have served in other functions for the Town of Andover. This board works well together and has a wealth of experience to share.

The best description I have found of the ZBA was written by the State. Here is a portion of what they say:

Functions of ZBA

There are five basic functions of a Zoning Board of Adjustment in New Hampshire:

1. Interpreting the terms of the zoning ordinance, or the application of those terms to a particular set of facts.
2. Determining whether a proposed use or project, or some aspect thereof, is “grandfathered” from having to comply with the terms of the ordinance.
3. Determining whether to allow a legalized violation of the ordinance (“variance”) is necessary to prevent the ordinance terms from being unconsti-

tutional as applied.

4. Granting a special exception as specifically allowed by the ordinance if the criteria set out in the ordinance are met.

5. Granting an “equitable waiver” which would legalize a dimensional violation when it would be unfair to require correcting it.

Appeals

This means that every ZBA case is an appeal of an administrative decision, whether that decision was made by a code officer, Select Board, or even a Planning Board. The ZBA has all the powers of the administrative official from whom the appeal is taken and can make such order or decision as ought to be made.

A ZBA can decide an administrative official made a mistake. Don’t be trapped by the label on a case. For example, if somebody applies for a variance, it’s still open to the ZBA to decide that no variance is needed – for example, because (a) the ordinance has been interpreted wrong, or (b) the proposed use is “grandfathered.”

Are you a judge? No. While your function is “quasi-judicial” in the sense that you must be personally unbiased, you aren’t like a judge. Judges decide only controversies between adversaries. Many ZBA applications don’t have adversaries or opponents. If that happens in Court, the party who comes wins by default. But that’s not true with a ZBA.

Whose interest do you represent? Is it the “public interest” as you see it? No. You may think some zoning provision is entirely stupid and even contrary to the public interest. But you cannot act on such feelings. You must assume the validity of the zoning ordinance.

Representing the Public Interest

Instead the ZBA represents the public interest as actually embodied in the zoning ordinance. The overall integrity of your zoning ordinance is an invisible party in every case, and part of your function is to protect its interests!

This is a long description (and it’s not even the whole of it), but it embodies the “flavor” of what we do. You are not likely to win any popularity contests as part of the ZBA, but you will fulfill a basic and necessary function for our community. Come to a ZBA meeting, talk to one of the members, or stop by the town hall and talk with Pat Moyer. We would like to hear from you! 

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