

***\*PROPOSED CHANGES\****

**PLANNING BOARD  
Durham, New Hampshire  
RULES OF PROCEDURE**

*September 11, 2013 (incorporating Planning Board comments from August 28, 2013)*

**I. AUTHORITY**

These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance of Durham, New Hampshire.

**II. OFFICERS**

- A. Chair. A Chair shall be elected annually by a majority vote of the Board in the month of May. The chair shall preside over all meetings and public hearings, appoint such committees from the Board members as necessary, and shall affix his/her signature in the name of the Board. The Chair serves as an active voting member of the Board. [4]
- B. Vice- Chair. A Vice-Chair shall be elected annually by a majority vote of the Board in the month of May. The Vice-Chair shall preside in the absence of the Chair and shall have the full power of the Chair on matters which come before the Board during the absence of the Chair. [4]
- C. Secretary. A Secretary shall be elected annually by a majority vote of the Board in the month of May. The Secretary shall verify and review Board records that the Department of Planning, Zoning, and Code Enforcement maintain and shall see that minutes of site inspections are drafted and made available to the full Board. [4]
- D. Re-election. All officers shall serve for one year and shall be eligible for re-election.
- E. Alternates. Up to five (5) alternate members may be appointed, as provided for by the local legislative body pursuant to RSA 673:6, to serve whenever a regular member of the Board is unable to fulfill his/her responsibilities. Alternates should attend and participate in discussions at all Board meetings, but shall not be permitted to introduce a motion, second a motion, or vote unless appointed by the Chair to fill the vacancy of an absent, recused, or disqualified regular Board member. [4]

**III. MEETINGS**

- A. Regular meetings shall be held at 7:00 p.m. in the Town Council Chambers, Durham Town Offices, on the second and fourth Wednesday of each month. [2] Other meetings may be held on call of the Chair provided public notice and notice to each member is given at least 24 hours, excluding Saturdays, [3] Sundays and legal holidays, prior to such a meeting.
- B. Quorum. A quorum for all meetings of the Board shall be four members, including alternates sitting in place of members.

- C. Disqualification. If any board member thinks it appropriate to be recused (or “disqualified”) from hearing a particular case, as provided in RSA 673:14, that board member shall notify the Chair as soon as possible so that an alternate may be requested to sit in that board member’s place. The recusal shall be announced by either the Chair or the recused member. The member being recused shall leave the table during the public hearing and all deliberation on the application. [3]
- D. Order of Business. The order of business for regular meetings shall be as follows [7]:
- I. Call to Order
  - II. Roll Call
  - III. Seating of Alternates
  - IV. Approval of Agenda
  - V. Planner’s Report
  - VI. Public Comments \*
  - VII. Public Hearings \*\*
  - VIII. Development Projects – old projects \*\*\*
  - IX. Development Projects – new projects \*\*\*
  - X. Other Business \*\*\*\*
  - XI. Approval of Minutes from prior meeting(s)
  - XII. Adjournment

\* For Public Comments, the board shall not permit comments about development projects that are currently under review by the Planning Board, whether specifically listed on that evening’s agenda or not. ~~*This restriction applies to formal development projects, i.e. those that have been accepted as complete by the Planning Board or that have returned to the board for any type of review/consideration after they have been accepted as complete or approved.*~~

\*\* For items other than development projects that require public hearings.

\*\*\* This includes acceptance, public hearings, final action, amendments, extensions, etc.

\*\*\*\* This includes discussion/review of ordinances, regulations, master plans, special projects, etc.

(Note: Unless approved by a 2/3 vote of the members’ present, no new item of business shall be taken up after 10 p.m.) [4]

In preparing the agenda in advance of the meeting, the Planning Board chair and Town Planner may rearrange and rename items on the agenda, particularly items VII., VIII., IX., and X., as they see fit, in order to facilitate the efficient and productive flow of the meeting. [7]

- E. Attendance. *Members shall notify the Planning Board Chair and/or the Planning Director, as much in advance as possible, when they will not be able to attend a meeting.* The unexcused absence of a member from three (3) consecutive meetings or six (6) meetings in a twelve (12) month period shall constitute grounds for removal by the Town Council.
- F. Non-public Sessions. All deliberations *on-applications* shall be held in public except for non-public sessions held in accordance with the provisions of RSA 91-A.
- G. Communications. Discussions on applications should only be held at public meetings/public hearings. Discussions outside of these meetings by Planning Board members (including Alternates) should be discouraged as much as possible. This includes the use of email, and other forms of electronic communications, regarding Planning Board matters. Email should be directed to the Chair and sent to the Director of Planning and Community Development. The email, from Board members and non-members, will then be forwarded to all members and be placed in the record of the proceedings. [4]

#### IV. APPLICATIONS/DECISIONS

- A. Applications.
  1. All applications for consideration by the Board shall be made on forms provided by the ~~*Dept. of Planning, Zoning, and Code Enforcement*~~ *Department of Planning and Community Development* and shall be submitted to the Planning Director at least twenty-one (21) days prior to the scheduled meeting date. Submissions that fail to meet this requirement will be considered at the next appropriate meeting, *except as may otherwise be provided in the Site Plan or Subdivision Regulations.* [3]
  2. All applications must be accompanied by adequate plans and documentation in accordance with the terms of the Zoning Ordinance, Site Plan Review Regulations, Subdivision Regulations, and Road Regulations. The Planning staff is directed by the Board to advise applicants in meeting these minimum requirements. All submissions, including those from the applicant, abutters, and the general public, must be received by the Department of Planning and Community Development by noon on Friday before the next Planning Board meeting in order for the information to be included in the Planning Board packet. Anything submitted after that time will be placed in an envelope to be give to the Planning Board the day of the meeting. The Planning Board members may, or may not, read the information the day of the meeting. [3] [5]
  3. After the acceptance of an application *as complete*, a site walk of the property may be performed at the discretion of the Board. Site walks should be performed prior to the public hearing. However, if the subdivision is a Conservation Subdivision, a site walk shall be performed before the Design Review phase (Phase 2) of the

application. Site walks are considered meetings of the Board and an agenda must be posted and minutes maintained. Members of the public are welcome to attend, but may only be heard at the discretion of the Board. In addition, the Conservation Commission will be notified of the site walk and is encouraged to attend. [4] [5]

4. A public hearing shall not be scheduled, advertised and held unless an accepted application is in full conformity with the Board's requirements, *except for Design Review applications as provided herein.* [3]
5. All forms and revisions *to forms* prescribed by the Board shall be adopted by resolution of the Board ~~*and shall become part of these Rules of Procedure.*~~
6. A member of the Board who originally voted with the majority on a decision may request reconsideration of a decision made on an application. A majority vote of the Board members present is required to reconsider an application. The request for reconsideration shall only be made by members of the Board and the request shall make clear the reason the request is being made.
7. The Planning Board shall not waive the preliminary phases, Phase I Conceptual Consultation and Phase II Design Review, for any subdivision not given an exemption from the Conservation Subdivision Ordinance. [5]
8. *After the public hearing has been closed the staff shall not forward any emails or letters from the public about the application, except as may be specifically approved by the Planning Board or the Planning Board Chair.*
9. *Conditional Uses. Generally, the Planning Board shall review the criteria for conditional uses at the final meeting when it is deliberating the prospective conditions of approval for a project.*

B. Public Notice.

1. The public notice of an Acceptance Meeting and/or Public Hearing on an application shall be given in the local newspaper as the legal notice of meeting and shall be posted in two locations at least ten (10) days before the date set for either meeting. The legal notice shall include the name of the applicant, description of the property including tax map identification, action desired by the applicant, and the date, time and place of the meeting.
2. Personal notice of an Acceptance Meeting and/or Public Hearing shall be made by certified mail to: the applicant; all abutters; and the surveyor, engineer, architect and/or soil scientist (when applicable) at least ten (10) days before the date of the meeting. Said notice shall contain the same information as the legal notice ~~*and shall include a list of all abutters to the property as previously noted.*~~

3. The Planning Board shall accept the application as complete at one meeting and hold the public hearing at the next available meeting. Once an application is submitted, if an application appears to be complete the staff shall include in the public notices the dates at which the application is expected to be accepted as complete and the public hearing is expected to be held.

C. Public Hearing. The conduct of a Public Hearing shall be governed by the following rules:

1. The Chair shall read the official notice of Public Hearing ~~and identify all persons listed as abutters.~~
2. The Chair shall provide appropriate information about the application, by reading the Letter of Intent submitted with the application, or by other means as deemed appropriate.
3. After the approved motion to open the public hearing, the Chair shall announce the opening of the Public Hearing. [3]
4. The Board will hear any information that pertains to the facts of the application and how those facts relate to State law, the Durham Zoning Ordinance, and the Board's regulations.
5. The Chair, ~~with the approval of the Board,~~ may place reasonable time limits on all speakers.
6. All persons wishing to speak shall be required to identify themselves, provide their address and state whether they are a party to the application or an agent or counsel of a party to the application.
7. Persons wishing to speak shall be allowed to do so in the following order:
  - a. The applicant shall present his application.
  - b. Persons speaking in favor of the application.
  - c. Persons who have concerns about the application or those speaking in opposition to the application. [5]
  - d. The applicant may speak in rebuttal for up to fifteen minutes. [4]
  - e. One person representing those in opposition to the application may speak in rebuttal for up to fifteen minutes. [4]

- f. Any member of the Board may request the Chair to allow any party to speak a second time.
- g. Questions by any member of the Board may be asked at the discretion of the Chair. [4]
- h. When all parties have been heard, and if no outstanding issues remain to be heard, the Chair may entertain a motion to close the Public Hearing. Only when such a motion is seconded and approved will the Chair announce that the Public Hearing is closed, and no further public testimony may be heard.
- i. When there is sufficient reason, the Public Hearing may be continued after a motion to do so has been approved by the Board. If the date of the meeting to which the Public Hearing is continued is decided and announced, then no further legal notices will need to be sent.

8. *Once a public hearing has been closed, the Chair, with approval of the Planning Board, may reopen the public hearing when significant new material or concerns are presented to the Planning Board.*

D. Deliberations. Deliberations are for discussions among the Planning Board members only. Deliberations will not begin until the public hearing is closed. At the discretion of the Chair, the Board may ask questions of the applicant, or others, for clarification on items of discussion. [5]

E. *Design Review. For design review applications, at the first meeting of the Planning Board, the project will be presented, and at the next meeting a public hearing will be held. The staff shall state this accordingly in the notices that are mailed and posted when the application is submitted. A public hearing will still be required later after the formal application is accepted as complete.*

F. *Approval of Projects.*

1. *All approvals (except where deemed unnecessary) shall include a section outlining "Findings of Fact."*

2. *The Planning Board Chair (or his/her designee) shall sign the Notice of Decision for approved projects (except on minor projects where it is not deemed necessary). The Planning Director shall sign ("certify") final approved plans.*

3. *The timeframe for meeting precedent conditions shall be six months from the date of Planning Board approval, though the board may set the timeframe differently as it sees fit.*

G. *Changes to Approved Plans. There are three types of changes to approved plans, as follows:*

1. Administrative Modification. Simple, straightforward changes that would not reasonably be expected to have any impact on abutters, the public, or the quality or character of the project may be approved by the Planning Director administratively. An appropriate record shall be maintained of any approved administrative modification.
2. Planning Board Modification. Changes that would not reasonably be expected to have any meaningful impact on abutters or the public, but which may be considered more consequential than those appropriate for Administrative Modifications may be approved by the Planning Board with no notices being sent or published. Planning Board modifications may be listed on the agenda as specific items or taken up under Other Business, as appropriate. Applicants shall complete a Modification form for submission to the Planning Board, where appropriate. When a Planning Board modification is presented to the Planning Board, the board, at its option, may determine that the requested change should be treated as an amendment (see below).
3. Amendments. Changes that are more significant or where the change might reasonably be expected to have a meaningful impact on abutters or the public shall be treated as amendments. Applicants shall complete an Amendment form for submission to the Planning Board. For amendments a public notice shall be published in the newspaper and notices shall be sent by certified mail to all abutters.

## V. RECORDS

- A. The records of the Planning Board shall be kept by the staff of the ~~Planning, Zoning, and Code Enforcement Department~~ Planning and Community Development Department and be made available for public inspection in accordance with statutory requirements.
- B. Final written decisions will be placed on file and available for public inspection within 144 hours ~~H~~ after a decision is made (per RSA 676:3). [1]
- C. Minutes of all public 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 within 5 business days after the public meeting (RSA 91-A:2 II). [6]
- D. Audio and video of all public meetings, if available, shall be made open to the public. [4]

## VI. JOINT MEETINGS

- A. RSA 676:2 provides that the Planning Board may hold joint meetings with other "land use boards", including but not limited to the Zoning Board of Adjustment, Conservation Commission, or the Historic District Commission, and each board shall have discretion as to whether or not to hold the joint meeting.

- B. Joint meetings with any other land use board may be held at any time when called jointly by the Chairs concerned.

~~1. —The joint meeting must be a formal public meeting or hearing on an application to both boards regarding the same subject matter.~~

1. RSA 676:2 requires the Planning Board Chair to chair the joint meeting in which the Board is participating.
2. The provisions covering the conduct of public hearings, set forth in these Rules of Procedure, together with such additional provisions as may be required by the other participating board, shall be followed.

## VII. MISCELLANEOUS

- A. Applications may only be withdrawn in writing by the applicant prior to the public hearing on the application, unless voted otherwise by the Board.

- B. If an application is withdrawn, the applicant will be allowed to resubmit the application and must pay for reasonable costs (copying, legal, and postage, etc.).

C. Correspondence.

1. All correspondence shall be directed to the Chair of the Planning Board, Durham Town Office, 15 Newmarket Road, Durham, NH 03824 and shall be distributed to members of the Board.
2. All documents or communications from the Board shall be signed by the Chair or his/her designee.
3. The Board may authorize the Chair, or any other member of the Board, to speak on behalf of the Board. [3]

- D. Annual Report. An annual report shall be prepared by the Chair, reviewed by the Board, and submitted to the governing body for inclusion in the Town Report.

~~E. —Planning Meetings. At least one meeting a quarter shall be set aside as a meeting with no regular business. At this meeting the Board shall discuss issues related to general planning, the Master Plan, Zoning Ordinance, or other “housekeeping” business. [3]~~

E. Planning Workshops. Planning workshops to discuss issues related to general planning, the Master Plan, prospective amendments to the Zoning Ordinance and regulations, policies and procedures, and other “housekeeping” business shall be held at least twice each year. Workshops shall be held on the second meeting date in May and October in place of regular meetings or as called by the Planning Board Chair.



## VIII. AMENDMENTS

These Rules of Procedure may be amended by a majority vote of the members of the Board provided that a public hearing is held on the proposed amendment ~~prior to the meeting at which a vote is to be taken.~~

These Rules of Procedure were adopted at the Planning Board meeting on April 17, 1996 and revised at Planning Board meetings on the dates shown below. Specific revisions are referenced accordingly throughout the text.

- [1] – March 21, 2001
- [2] - January 16, 2002
- [3] - September 10, 2003
- [4] - February 1, 2006
- [5] - October 10, 2007
- [6] - April 9, 2008
- [7] - September 19, 2012

Most recently amended – September 19, 2012

*[Note that “chairperson” has been replaced with “chair” and “he/she,” “himself/herself” have been eliminated – e.g. instead of “He/she shall...,” “The chair shall...” is used.]*