



TOWN OF DURHAM
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RULES OF PROCEDURE
DURHAM PLANNING BOARD

Most recently amended August 28, 2019

I - REFERENCE

- 1.1 Authority. These Rules of Procedure are adopted under the authority of New Hampshire RSA 676:1.
- 1.2 Zoning Ordinance. For more information about the Planning Board see Article V in the Durham Zoning Ordinance.
- 1.3 Development Applications. For information about procedures and requirements for development applications, see the Town of Durham Zoning Ordinance, Site Plan Regulations, Subdivision Regulations, and Road Construction Regulations.

II - MEMBERSHIP

- 2.1 Regular Members. The Planning Board consists of seven regular members, one of whom is a representative of the Town Council.
- 2.2 Alternates. The Planning Board includes up to five alternates, one of whom serves as an alternate for the Town Council representative. Alternates should attend the meeting, sit at the table, and fully participate in discussions at all board meetings, but may not introduce a motion, second a motion, or vote (including for nonbinding straw polls) except when appointed by the chair to fill the vacancy of an absent or recused regular member.
- 2.3 Terms. Regular and alternate members serve three-year staggered terms except: a) when a member is appointed to serve the remainder of an unexpired term; and b) for the Town Council representative and alternate who serve one-year terms.
- 2.4 Oath of Office. Each appointed and re-appointed regular and alternate member shall take the oath of office as required under RSA 42:1.

III - OFFICERS

- 3.1 Elections. The Planning Board elects a chair, vice chair, and secretary at the annual meeting by majority vote. The Town Council representative and alternates may not serve as officers. All officers serve for one year and are eligible for re-election.
- 3.2 Chair. The chair sets the agenda for meetings in consultation with the Town Planner, presides over all meetings and public hearings, schedules special meetings as needed, serves as official

spokesperson for the board, appoints board members to committees, affixes his or her signature in the name of the board, and performs other duties customary to the position. The board may override any decision of the chair by a majority vote. The chair serves as an active voting member of the board and also may make and second motions.

- 3.3 Vice Chair. In the absence of the chair, the vice chair serves as chair on all Planning Board matters.
- 3.4 Secretary. The secretary prepares minutes of site walks. In the absence of the chair and the vice chair, the secretary serves as chair on all Planning Board matters.

IV - MEETINGS

- 4.1 Scheduling Meetings. Regular meetings are held at 7:00 p.m. in Town Council Chambers, Durham Town Hall, on the second and fourth Wednesday of each month, except where holidays and other considerations call for a different schedule. See RSA 91-A:2 for meeting requirements. Special meetings may be scheduled by the chair provided public notice and notice to each member is given at least 24 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. Emergency meetings may be scheduled in accordance with RSA 91-A:2, II.
- 4.2 Procedures. To the extent practical, the board follows generally accepted rules of parliamentary procedure.
- 4.3 Attendance. Members shall notify the Planning Department, as much in advance as possible, when they will not be able to attend a meeting. The absence of a member from three consecutive meetings or six meetings in a twelve-month period (when the member failed to notify about his or her absence) may constitute grounds for removal by the Town Council.
- 4.4 Quorum. A quorum for all meetings of the board is four members, including alternates sitting in place of regular members. As long as there is a quorum of members at the meeting, it is not necessary that at least four members vote on any specific item (as may result when one or more members abstain or recuse themselves). If the chair, vice chair, and secretary are all absent, the members present shall select a person to serve as chair for the meeting.
- 4.5 Recusal. If any board member believes that he or she has a conflict of interest, believes that there could be an appearance of a conflict of interest, or otherwise thinks it appropriate to be recused from participating on any matter, 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 recused member shall leave the table during the public hearing and all deliberations on the matter, but may remain in the room. A member who has been recused may still speak to the matter from the podium as an interested citizen, at his or her option.

When there is uncertainty about whether a member should recuse herself or himself, that member or any other member of the Planning Board may request an advisory vote by the board on the question.

- 4.6 Order of Business. The order of business for regular meetings is as follows:

- I. Call to Order
- II. Roll Call and Seating of Alternates
- III. Approval of the Agenda
- IV. Town Planner's Report
- V. Reports from board members who serve on other committees
- VI. Public Comments
- VII. Public Hearings
- VIII. Development Projects (Old Projects)
- IX. Development Projects (New Projects)
- X. Other Business
- XI. Review of Minutes
- XII. Adjournment

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

- 4.7 Public Comments. The public is welcome to speak on any topics except for: 1) matters currently under review for which the public hearing has been closed; and 2) items for which a public hearing is to be held that same evening. All speakers shall provide their name and address and direct their comments to the board. Any questions that are asked may be answered at the discretion of the chair. The chair may limit the length of comments at his or her discretion.
- 4.8 Roll Call Voting. At the request of any Planning Board member, the board shall vote by roll call of individual members on any matter calling for a vote.
- 4.9 Required Adjournment. No new item of business shall be taken up after 10:00 p.m. unless approved by a majority vote.
- 4.10 Remote Participation of Members. A member who is not physically present may participate in the meeting provided: 1) the board votes to allow the remote participation; 2) it was not reasonably practical for the member to attend the meeting in person; 3) the absent member can hear the proceedings; and 4) everyone at the meeting can hear the absent member. Except in an emergency, at least a quorum of the board must be physically present at the meeting.
- 4.11 Non-public Sessions. All deliberations shall be held in public except for non-public sessions held in accordance with RSA 91-A:3. Minutes shall be kept of non-public sessions in accordance with RSA 91-A:3 III. Consultation with legal counsel is not considered a meeting pursuant to RSA 91-A:2 I.(b).
- 4.12 Annual Meeting. An annual meeting is held in the spring during a regular meeting or a workshop for election of officers, appointing members to other boards and commissions, review of the prior year, and discussion of plans for the upcoming year.
- 4.13 Planning Workshops. Planning workshops are dedicated to discussing general planning issues, the Master Plan, amendments to the Zoning Ordinance and regulations, policies and procedures, and other business. Workshops are held on the second meeting date in May and October in place of

regular meetings or as called by the Planning Board chair. Agendas shall not include review of applications, reports from staff or members, public comments, nor review of minutes, though any items may be included when deemed necessary by the chair or the board.

V - PUBLIC HEARINGS

- 5.1 Comments and Questions. The public hearing is an opportunity for members of the public to speak about the matter at hand. All speakers shall provide their name and address and direct their comments to the board. Any questions that are asked may be answered at the discretion of the chair.

The chair may limit the length of comments at his or her discretion. The chair may ask in advance for a show of hands of those who intend to speak during a given hearing, in order to gauge whether instituting a time limit, such as for 5 minutes for each speaker, would be advisable.

- 5.2 Presentation. Prior to opening the public hearing for applications, the applicant shall present the project. Planning Board members may ask clarifying questions as directed by the chair.

- 5.3 Procedure. The following procedure applies to public hearings:

- a) The chair reads the agenda description of the public hearing and provides other information as necessary.
- b) After an approved motion, the chair opens the public hearing.
- c) Members of the public speak at the podium after providing their name and address and stating whether they are a party to the application. Speakers must always address the board and may not carry on conversations with each other or with the applicant.
- d) Interested parties may speak a second time only after all members of the public have had a chance to speak once.
- e) After everyone has spoken who wishes to, the applicant may respond to questions and comments made by the public.
- f) After all parties have spoken, the Planning Board will determine whether to begin deliberations or continue the project review to a subsequent meeting.
- g) If the project review will be continued to a subsequent meeting, the public hearing may also be continued, as announced by the chair. Or, the public hearing may be closed.
- h) The public hearing may be closed prior to starting deliberations. After the public hearing has been closed, if significant new information is submitted or if the Planning Board wants to ask the applicant any questions the public hearing must be reopened.
- i) When a decision by the Planning Board to reopen a public hearing occurs on the same day as the public hearing was closed then no new notices are required. When a decision to reopen a public hearing occurs on a subsequent date to when the public hearing was closed

new notices may be required. The reason for requiring new notices in this instance is that the applicant and interested parties may not have attended the meeting, not expecting a public hearing.

- j) All speakers at public hearings must wait their turn, speak only about the subject at hand, and use a respectful and civil tone.

5.4 Public Submission of Information. The public is welcome to submit information via emails and letters prior to the opening of a public hearing and while the public hearing is open. This correspondence will be posted on the website and forwarded to the Planning Board.

The Planning Board will not accept public input after a public hearing has been closed except for the following:

- a) Verbatim copies of statements made at the public hearing may be submitted up until any time on the next business day following the public hearing (or for a longer period of time if so specified by the Planning Board prior to closing the public hearing).
- b) For administrative matters (See Section 8.2), the Planning Board may, on a case-by-case basis, allow that additional written input be submitted for a limited period of time after the public hearing is closed. This allowance must be stated prior to closing the public hearing.

5.5 Scheduling Public Hearings.

- a) The public hearing is held at the first meeting for:
 - Boundary line applications as determined by the Town Planner
 - Conditional uses under the Wetland Conservation Overlay District and Shoreland Protect Overlay District as determined by the Town Planner
 - Governmental applications (UNH, ORCSD, and the Town of Durham)
- b) The public hearing is held at the second meeting with a presentation at the first meeting for:
 - Site plan applications
 - Subdivision applications
 - Design review applications
 - Conditional use applications (See WCOD and SPOD, above)
 - Sign master plans
 - Amendments to approved projects
 - Zoning amendments
 - Site plan and subdivision amendments
 - Scenic road activity (Bay, Bennett, Durham Point, and Packers Falls Roads)

5.6 Other Public Hearings. The board may hold a public hearing on any matter at its discretion. For hearings where the procedure is not otherwise specified, notices need not be sent or placed except as the board sees fit.

VI - APPLICATION REVIEW

- 6.1 Preliminary Review. RSA 676:4 II allows for preliminary review of site plan and subdivision applications as either a conceptual consultation or a design review. The former approach allows for the applicant to submit only a very basic plan. The latter requires a more detailed proposal. Preliminary review is strongly recommended for projects that are large, complex, or controversial in order that the applicant may have a dialogue with the Planning Board about the proposal prior to spending significant money on a fully engineered formal plan. Comments by board members are nonbinding, and applications are subject to change.
- 6.2 Acceptance. For formal site plan and subdivision applications, the Planning Board may accept the application as complete at the first meeting following a brief presentation by the applicant. After the application is accepted the public hearing will be scheduled for the next available meeting (except for projects listed in 5.5 a).
- 6.3 Scheduling Site Walks. Site walks may be scheduled at the discretion of the Board. Typically, site walks are held after acceptance of an application and prior to the public hearing. The Planning Board may hold a site walk on a preliminary application at its discretion. For a Conservation Subdivision, a site walk shall be held before the design review phase.

Site walks are public meetings of the board, and an agenda must be posted and minutes prepared. The Conservation Commission and the Historic District/Heritage Commission shall be notified of site walks when the application is germane to either commission.

- 6.4 Procedure at Site Walks. The following procedure shall be followed at site walks:
- a) The site walk starts at a specific time and location designated on the agenda. The chair officially opens the meeting and explains pertinent aspects of the site walk.
 - b) Members of the public are welcome to attend site walks. The chair asks the participants – including the applicant’s team, Planning Board members, members of other Town boards, staff members, neighbors, and other interested citizens – to introduce themselves.
 - c) The applicant’s representative leads the group on the site walk, explaining elements of the site and the project.
 - d) The participants proceed from one specific location to the next, stopping for a presentation of information and discussion at each spot.
 - e) Participants in the site walk should stay together so that everybody may participate in and hear the group discussion.
 - f) Discussion topics are limited to those relevant to the site walk.
 - g) Members of the public may ask questions and offer comments as directed by the chair.

- h) Planning Board members shall not participate in side discussions about the project. Other site walk participants should direct their comments to the group when the group stops for a discussion.
- i) The chair adjourns the site walk. Planning Board members must cease any discussions about the project after the site walk has been adjourned.

6.5 Conditional Uses. The Planning Board conducts its formal review of the criteria for conditional uses (Section 175-23 Approval Criteria) at the final meeting(s) of its deliberations on the prospective conditions of approval for a project. However, the board may discuss concerns about conformance with the conditional use criteria at earlier meetings.

6.6 Deliberations. Formal deliberations will not begin until the public hearing is closed. If the board wishes to ask questions of the applicant or any other parties the public hearing must be reopened (See subsection 5.3 i).

6.7 Approval of Projects. All approvals shall include appropriate conditions and (except those for minor projects) include a section outlining Findings of Fact. The Planning Board chair signs the Notice of Decision. The Town Planner signs final approved plans.

6.8 Changes to Approved Plans. There are three types of changes to approved plans:

- a) 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 Town Planner at his or her discretion.
- b) Planning Board Modification. More consequential changes that would not be expected to have meaningful impact on abutters or the public may be approved by the Planning Board without notices. Planning Board modifications may be listed on the agenda as specific items or taken up under Other Business. The board may determine that the requested change should be treated as an amendment.
- c) Amendments. Changes that might reasonably be expected to have a meaningful impact on abutters or the public are treated as amendments with a public hearing. Public notice shall be published and sent by certified mail to all abutters.

6.9 Postponements. The Planning Board authorizes the Town Planner to approve postponement of an agenda item when requested by an applicant. The Town Planner, in consultation with the applicant, may schedule a new date for the project to be presented to the Planning Board.

VII – CORRESPONDENCE AND RECORDS

7.1 Correspondence. All correspondence intended for the board should be directed to the Planning Board. Letters and emails should be sent to the Town Planner who will forward them to the Planning Board. Emails and letters received by individual Planning Board members should be forwarded to the Town Planner who will send them to the Planning Board.

Emails and letters received from the public that pertain to current Planning Board matters

(except when the public hearing has been closed) are: a) emailed to the Planning Board; b) mailed to the board members if received by the Thursday prior to the meeting or placed on the table the evening of the meeting, if received later; and c) posted on the Town's website.

Any correspondence or document that is pertinent to a decision that the Planning Board is expected to make at the upcoming Wednesday meeting must be received by the Planning Department by the prior Monday at 5:00 p.m., or the board will consider the submitted material only at its discretion.

- 7.2 Minutes. Minutes of all Planning Board meetings contain the following content, at a minimum: 1) names of board members present; 2) others participating in the meeting; 3) a brief summary of matters discussed; 4) decisions made or actions taken by the board; and 5) names of members who made and seconded each motion. The Planning Board shall vote to approve all minutes, including minutes of site walks. A quorum is not required for this vote. Minutes of all meetings shall be open to public inspection within 5 business days after the meeting per RSA 91-A:2 II. For straightforward corrections to the draft minutes, members are encouraged to send the corrections to the Planning Department Administrative Assistant directly prior to the meeting at which the minutes are to be reviewed by the Planning Board.
- 7.3 Annual Report. An annual report will be prepared by the chair and submitted to the Town Council for inclusion in the Town Report.

VIII – STANDARDS OF CONDUCT

- 8.1 Conduct of Officials. Planning Board members shall adhere to the rules for conduct of officials in Article 7 of the Durham Town Charter. <https://www.ci.durham.nh.us/municipal-code/town-charter>.
- 8.2 Communication outside of meetings. There are two kinds of matters that come to the Planning Board: a) applications and project reviews, called “quasi-judicial” matters; and b) administrative, policy, and legislative matters, such as proposed amendments to the Zoning Ordinance or Site Plan Regulations.
- a) For quasi-judicial matters, all communications by individual Planning Board members shall be limited to Planning Board meetings and communication with staff. However, the Town Council representative and the Town Council alternate may discuss these matters with each other since they may need to coordinate who is sitting as a member for a particular project. If Planning Board members are contacted about quasi-judicial matters by people outside of meetings, those people should be redirected to the Town Planner.
- b) For administrative, policy, and legislative matters, it is generally recommended that Planning Board members refrain from discussing these matters outside of Planning Board meetings.
- 8.3 Removal of members. Members may be removed from the Planning Board for good cause in accordance with RSA 673:1.

IX – OTHER MATTERS

- 9.1 Joint meetings. The Planning Board may hold joint meetings with other land use boards, such as the Historic District Commission, Conservation Commission, and Zoning Board of Adjustment, in accordance with RSA 676:2.
- 9.2 Representing the board. The board may authorize the chair or any other member of the board to speak on behalf of the board for any specific matter.
- 9.3 Appointments to Committees. The Planning Board may appoint a representative to each of the following commissions and committees, to the extent that interested board members are available to serve. Board members are encouraged, but not required, to serve on one or more of these bodies as the board's representative.
- Agricultural Commission
 - Conservation Commission
 - Economic Development Committee
 - Energy Committee
 - Historic District Commission
 - Integrated Waste Management Advisory Committee
 - Minor Site Committee
 - Technical Review Group
 - Traffic Safety Committee

X – AMENDMENTS

The Rules of Procedure may be amended by a majority vote of the members of the Planning Board following a public hearing. The Rules of Procedure were originally adopted on April 17, 1996 and were most recently amended on August 28, 2019.