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PLANNING BOARD
Durham, New Hampshire
RULES OF PROCEDURE
NEW PROPOSED DRAFT
March 6, 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 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 may also 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 reviews and verifies board records as needed and 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 Offices, 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. Failure to strictly follow parliamentary procedure shall not, in itself, invalidate any action by the board.
- 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).
- 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 (or “disqualified”) 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 member being recused 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 be recused, that member or any other member of the Planning Board (but no other party) may request a vote by the board on the question. Such a vote is advisory only.

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. Roundtable – Comments from Board Members including Reports about 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 during the Public Comments section. However, the Planning Board will not accept comments at that time on: 1) matters currently under review for which the public hearing has been closed; 2) matters for which a public hearing is expected to be scheduled soon; and 3) items for which a public hearing is to be held that same evening. All speakers shall provide their name and address. All comments shall be directed to the board. The public comments section is not a time for asking questions to the board or staff; however, questions may be answered at the discretion of the Chair. The Chair may set a limit on the time allowed for each comment at his or her discretion. The Chair may cut off any individual speaker who speaks at significant length, who is disrespectful of the Planning Board or any individual, or for any other good cause.

4.8 New Items of Business. Unless approved by a majority vote of the members' present, no new item of business shall be taken up after 10:00 p.m.

4.9 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, as determined by the Chair, at least a quorum of the board must be physically present at the meeting.

4.10 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).

- 4.11 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.
- 4.12 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 housekeeping 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 should 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 comments shall be directed to the board. If a speaker asks a question, the question may be answered right away, answered later, or disregarded for the moment, as determined by the Chair.

The Chair may set a limit on the time allowed for each comment 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. The Chair may bring to conclusion anyone who speaks too long, strays off topic, or is disrespectful of the Planning Board or any individual, or for any other good cause.

- 5.2 Presentation. Prior to opening the public hearing for applications, the applicant shall present the project. For other matters that involve a public hearing, the staff or other parties may introduce the item as needed. Planning Board members may ask clarifying questions during or immediately after the presentation as directed by the Chair. However, it is best to limit the presentation and Planning Board questions, as practical, in order that members of the public need not wait long to speak.
- 5.3 Procedure. The board follows this procedure for public hearings:
- 1) The Chair reads the agenda description of the public hearing and provides other information as appropriate.
 - 2) After the approved motion, the Chair opens the Public Hearing.
 - 3) Interested parties may speak. All speakers shall provide their name and address and state whether they are a party to the application.
 - 4) Any party may speak a second time only after all members of the public have had a chance to speak once.
 - 5) After all have spoken, the applicant may offer additional comments and respond to questions and comments made by the public.

- 6) After an approved motion, the public hearing is: a) closed; or b) concluded for that evening and continued to a subsequent meeting. If the public hearing is continued, the Chair shall give the date at which the hearing will be continued (If a specific date is given then no additional notice is required).
- 7) After the public hearing is closed or continued Planning Board members may ask any questions to the applicant as directed by the Chair.
- 8) Once a public hearing has been closed, the board may reopen the public hearing for good cause. If a public hearing will be reopened at a subsequent meeting for the purpose of reviewing new information then preparation of new notices may be required.

- 5.4 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, as appropriate.

The Planning Board will not accept any public input after a public hearing has closed, including verbatim transcripts of statements made at the public hearing. However, for administrative matters (master plans, site plan regulations, etc.) the Planning Board may, on a case-by-case basis, prior to closing the public hearing, provide that the record remain open for a limited period of time after the public hearing closes to accept additional input.

- 5.5 Scheduling Public Hearings. Public hearings shall be scheduled as follows:
Public hearing held at first meeting:

- Boundary line applications when the applications is straightforward
- UNH (and Oyster River and Town) applications
- Scenic roads

Public hearing held at second meeting with presentation at first meeting:

- Site plan applications
- Subdivision applications
- Design review application
- Conditional use applications
- Amendments (to approved projects)
- Zoning amendments
- Site plan and subdivision amendments
- Sign master plans

- 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 Application. RSA 676:4 II allows for preliminary review of site plan and subdivision applications as either a preliminary 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. Any comments by board members are nonbinding and applications are subject to change.
- 6.2 Acceptance. For formal applications, the Planning Board accepts the application as complete at one meeting and holds the public hearing at the next available meeting (except for Boundary Line Adjustments).
- 6.3 Scheduling Site Walks. One or more 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 should 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 are notified of site walks when the application is germane to either commission.

- 6.4 Procedure at Site Walks. The following procedure is followed at site walks:
- 1) 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.
 - 2) 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.
 - 3) A representative of the applicant leads the group on the site walk, explaining salient elements of the site and the project, as directed by the Chair.
 - 4) The participants proceed from one specific location to the next, stopping for a presentation of information and discussion at each spot.
 - 5) Participants in the site walk are encouraged to stay together so that everybody may participate in and hear the group discussion.
 - 6) Discussion topics are limited to those relevant to the site walk.
 - 7) Members of the public may ask questions and offer comments as directed by the Chair.
 - 8) Planning Board members shall not participate in side discussions about the project. Other site walk participants are encouraged to direct their comments to the group when the group stops for a discussion.

9) The Chair adjourns the site walk at the appropriate time. Planning Board members must cease any discussions about the project after the site walk has been adjourned.

10) Minutes for site walks are approved by the Planning Board.

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 of its deliberations on the prospective conditions of approval for a project. However, the board may discuss the criteria at earlier meetings, without forming a final determination, when deemed useful.

6.6 Deliberations. Formal deliberations will not begin until the public hearing is closed. The board may ask questions of the applicant and others for clarification on items of discussion, as directed by the Chair.

6.7 Approval of Projects.

All approvals (except those for minor projects) shall 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:

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 Town Planner. A record is maintained of all approved administrative modifications.

2) 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 with no notices. Planning Board modifications may be listed on the agenda as specific items or taken up under Other Business. If necessary, the board, at its option, may determine that the requested change should be treated as an amendment.

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 are treated as amendments with a public hearing. A public notice is published in the newspaper and notices are sent by certified mail to all abutters.

6.9 Postponements. The Planning Board authorizes the Town Planner to approve a postponement from a Planning Board agenda 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. Applicants are encouraged to provide as much advance notice as possible when requesting a postponement. (The reason for this authorization is to avoid the necessity of the applicant – and other interested parties – having to appear before the board that evening only to have the project then be postponed, as requested.)

VII – CORRESPONDENCE AND RECORDS

7.1 Correspondence. All correspondence intended for the board should be directed to the Planning

Board. Letters should be mailed care of the Planning Department and email should be sent to the Town Planner. 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 (This limitation does not apply to comments made in person at a public hearing).

- 7.2 Minutes. Minutes of all Planning Board meetings contain the following content, at a minimum: 1) names of board members present; 2) other people participating in the meeting (It is not necessary to list all people present); 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. A quorum is not required for this vote. Members who did not attend the meeting for which the minutes are being considered should not vote. For straightforward corrections to the draft minutes, members may simply contact the minute taker directly and need not mention the correction at the meeting.
- 7.3 Records. All records kept by the Planning Department.
- 7.4 Annual Report. An annual report will be prepared by the Chair, reviewed by the board members, 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 the Town Charter. See Article 7 at this link: <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) all other matters, including administrative, policy, and legislative matters (such as proposed amendments to the Zoning Ordinance or Site Plan Regulations).
- 1) For quasi-judicial matters, all communications by individual Planning Board members shall be limited to Planning Board meetings, other pertinent public meetings, and communication with staff. However, the Town Council representative and the Town Council alternate may discuss these matters with each other as they deem appropriate 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 contacts should be redirected to the Town Planner.

2) 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 Riggins Rules. Planning Board members are encouraged to read and refer to *Riggins Rules*, a set of 39 recommended practices for planning board members, written in 1967 by Fred Riggins, former chair of the Phoenix, Arizona Planning Commission. Riggins Rules is posted at this link: https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/15701/riggins_rules_updated_michaels_version.pdf.

8.4 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, including but not limited to 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 boards and committees, to the extent that interested board members are available to serve. Board members are encourage, but not required, to serve on one or more of these boards and committees as the board’s representative.

- 1) Agricultural Commission
- 2) Conservation Commission
- 3) Economic Development Committee
- 4) Energy Committee
- 5) Historic District Commission
- 6) Integrated Waste Management Advisory Committee
- 7) Minor Site Committee
- 8) Technical Review Group
- 9) Traffic Safety Committee
- 10) Other boards and committees

X – AMENDMENTS

These Rules of Procedure may be amended by a majority vote of the members of the Planning Board following a public hearing on the proposed amendment(s). There is no notice requirement other than posting of the agenda in at least two public places at least 10 days in advance of the hearing.

(An earlier version of the Rules of Procedure was adopted on April 17, 1996 and amended numerous times, the most recent being July 26, 2017.)

These Rules of Procedure were adopted at the Planning Board meeting on ### and revised at Planning Board meetings on the dates shown below: