

**TOWN OF WESTON
DEVELOPMENT REVIEW BOARD**

Rules of Procedure and Conflict of Interest Policy

Section I: Authority

The Development Review Board of the Town of Weston hereby adopts the following Rules of Procedure and Conflict of Interest Policy (“Rules”) in accordance with 24 V.S.A. § 4461 and 1 V.S.A. § 312.

Section II: Policy

These Rules are adopted to help ensure consistent and fair treatment of applicants, interested persons, and participants, to promote orderly and efficient public proceedings, and to comply with state and federal law. These Rules are also intended to ensure that no Board member will gain a personal or financial advantage from his or her work for the Board, and so that the public trust in municipal government will be preserved.

Section III: Definitions

Board means the Development Review Board (DRB).

Board member means a regular or alternate member of the Board.

Conflict of interest means any one of the following:

1. A direct or indirect personal interest of a Board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother-in-law or sister-in-law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Board.
2. A direct or indirect financial interest of a Board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother-in-law or sister-in-law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Board.
3. A situation where a Board member has publicly demonstrated a prejudgment of the merits of a particular proceeding before the Board. This shall not apply to a member’s particular political views or general opinion on a given issue.
4. A situation where a Board member has not disclosed to the Board ex parte communications with a party in a proceeding before the Board, pursuant to Section XII of these Rules.

Deliberative session means a private session of the Board to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed. The Board may enter deliberative session by majority vote and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.

Executive session means a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.

Ex parte communication means direct or indirect communication between a Board member and any party, party's representative, party's counsel or any person interested in the outcome of any proceeding before the Board, that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.

Official act or action means any legislative, administrative or quasi-judicial act performed by any Board member.

Public deliberations means the weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

Recuse means to remove oneself from a particular Board proceeding because of a real or perceived conflict of interest.

Section IV: Membership (Regular and Alternates) and Officers

Regular Members. The Board shall consist of seven (7) regular members appointed by the Select Board of the Town of Weston, or such other number as determined from time to time by the Selectboard. The term of each Regular Member shall be 5 years. It shall be the duty of all regular members to attend meetings and hearings, and review the minutes and other official records of Board meetings, hearings and actions, and correct and ratify these when appropriate and necessary.

Organizational Meeting. At the first meeting held after Town meeting each year, or at other times as needed throughout the year, the Board shall hold an organizational meeting and elect by majority vote a Chair, Vice Chair and Secretary.

Chair and Vice Chair. The Chair shall preside at all meetings, hearings, and deliberative sessions, decide all points of order or procedure, and appoint members to any committee of the Board. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration. If the Chair is unable to act or preside, the Vice Chair will act or preside.

Secretary. A secretary shall be responsible for ensuring that minutes of all meetings and hearings are taken and properly distributed, unless delegated to the Zoning Administrator or other individual.

Alternate Members. The Select Board may annually, or as needed, appoint alternates who may temporarily serve as Board members in the event there is no quorum. The term of each Alternate Member shall be 2 years. Alternate members shall have the same duties as regular members with respect to matters to which they have been specifically assigned.

- A. An alphabetical roster of all alternate members shall be kept by the Board. The assignment of alternates for active duty will begin with the first alternate in alphabetical order and rotate through the list until all alternates have served and rotation will be repeated.
- B. Whenever a regular member has a conflict of interest or is expected to be on extended absence from the DRB, the chairperson of the DRB or his or her designee, shall appoint an alternate to serve as an active member of the DRB by selecting an individual from the roster as provided in paragraph A. If the chairperson does not appoint an alternate as required under this paragraph, a majority of the members of the DRB present and voting may appoint an alternate to serve in accordance with this paragraph.
- C. An alternate who is called upon to serve shall be required to be a part of the Board until a final decision is made on any application heard by the Board while such alternate is serving as an active member. Participation includes attending deliberative sessions and continuance of a public hearing if the application has been tabled or adjourned to another date.
- D. Alternates may also be asked to participate in or attend meetings and hearings in order to learn the role and responsibility of a DRB member.

Removal. Upon majority vote, the Board may request that the Select Board remove a Board member (regular or alternate) from the Board. Board members may be removed for cause by the Select Board upon written charges and after public hearing. 24 V.S.A. § 4460(c).

Vacancies. The Chair shall give immediate notice of any vacancy to the Select Board and request a replacement. Any vacancy among the officers of the Board shall be filled by election for the unexpired term, at the next meeting of the Board.

Section V: Meetings.

Meetings. Regular meetings to conduct business of the DRB shall be held in the Town office or other location, with, if determined necessary, a web conference, to be determined by the DRB from time to time. The date and time for regular meetings shall be established from time to time by the DRB. The Chair may cancel meetings at any time.

Special Meetings of the Board may be called by the Chair, provided at least 24 hours' notice is given to each member and the time and place of each meeting is publicly announced at least 24 hours before the meeting.

Quorum. For the conduct of a meeting and the taking of any action a quorum must be present. A quorum shall consist of a majority of the entire Board (regular members only).

Participation by Telephone or Other Electronic Means. Members may participate (which includes attendance and voting) by telephone or other electronic means as long as all members can hear everything that is occurring at the meeting and everyone present at the meeting can hear all members.

Open Meeting. All meetings of the Board shall be open to the public, subject to the Vermont Open Meeting Law, unless the Board, by majority vote, has entered a deliberative or executive session. The Board may only hold an executive session pursuant to the reasons permitted by 1 V.S.A. § 313, and only after a majority vote to enter executive session.

Agenda for Meeting. There shall be an agenda for each meeting, determined by the Chair, listing each item or group of times to be considered. All business shall be conducted in the same order as it appears on the agenda, except that by majority consent, the Chair may alter the order of items to be considered.

Questions of Order or Procedure. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. §312(h).

Section VI: Public Hearings.

Conduct of Public Hearings. Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5)(B). Hearings shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2), as amended. Hearings shall not exceed two hours in length unless approved by a majority of members present.

Conduct of hearing. The Chair shall conduct the hearing in the following manner:

- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events, remind all present that the proceeding will be conducted in an orderly manner, in accordance with these Rules. A copy of the Rules shall be posted on the Town of Weston website and made available at the Town office upon request.
- C. Request disclosure of any conflicts of interest and ex parte communications.
- D. Review the definition of "interested person" as defined in 24 V.S.A. §4465(b). Explain that, pursuant to 24 V.S.A. § 4471(a), only an "interested person," who has participated in this proceeding may take an appeal of any decision issued in this proceeding.

- E. Ask all who believe they meet the definition of an interested person to identify themselves and to provide contact information. The Board shall not make any determination as to party status in all proceedings except for appeals of an administrative officer decision. As these Rules do not differentiate between persons with “interested person” status and those without, anyone seeking to participate in a proceeding may do so subject to these Rules and those established by the Chair.
- F. Direct the applicant or his/her representative and all interested persons to step forward and take the following oath: *I hereby swear that the evidence I give in the cause under consideration shall be the whole truth and nothing by the truth so help me Got (or, under the pains and penalties of perjury.)*
- G. Accept relevant written information presented to the Board.
- H. Invite the applicant or applicant’s representative to present such application or proposal.
- I. Invite Board members to ask questions of the applicant or applicant’s representative.
- J. Invite interested persons and members of the public to present their information regarding the application or proposal.
- K. Invite the applicant or applicant’s representative to respond to information presented.
- L. Invite more questions or comments from members of the Board.
- M. Invite more questions from interested persons and members of the public.
- N. Allow final comments or questions from the applicant or his/her representative or members of the Board.
- O. Upon motion and majority approval, the Chair shall either continue the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.
- P. Upon final adjournment, the Board shall be deemed to be in deliberative session until a written decision is issued.

Section VII: Site Visits.

Site visits shall be open to the public; however, no testimony shall be taken and no ex parte communication shall occur. Site visits shall be held pursuant to the following conditions:

- A. If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled immediately prior to a public hearing. Such site visits shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2).
- B. If necessary, the Board may recess a hearing to conduct a site visit at a property which is the subject of an application before the Board.
- C. If necessary, the Board may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the Board.
- D. The minutes of the proceeding shall reflect that a site visit was held, who was present, and the nature and duration of the site visit.

Section VIII: Service List.

The Zoning Administrator shall create and maintain a list of all individuals who participated in the proceedings. The list shall include those who participated orally and those who participated in writing. All decisions of the Board shall be mailed to those on the list. The list shall include:

- A. The names of those who participated in the proceedings.
- B. The nature of participation by those who participated.
- C. The mailing and email address of each of these persons.

Section IX: Decisions and Voting.

The Board shall make decisions in deliberative session. Deliberative sessions are not open to the public and need not be warned. 1 V.S.A. §§ 312(e), (f). Members of the Board who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding. Absent board members may participate if they have reviewed the audiotape of the proceedings, and any evidence submitted, subject to the written consent of the applicant and all interested persons. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The Chair has the same voting rights as all members and can make motions.
- C. No second shall be required for a motion to have the floor. All members present are expected to vote unless they have recused themselves.
- D. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- E. For a motion to pass, it must receive the concurrence of a majority of the entire Board (regular members only), regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).
- F. The record of the vote shall include the names of the member(s) who abstained or voted against a motion.
- G. The Board shall issue a decision within 45 days of the final public hearing.

Section X: Conflicts of Interest.

Participation, disclosure of conflicts, and recusal shall be governed by the following procedures:

Participation. A Board member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration, except as hereinafter provided. A Board member shall not, personally or through any member of his or her household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in any proceeding pending before the Board.

Disclosure. At all hearings, the Chair shall request that Board members disclose all potential conflicts of interest. When recognized by the Chair, any person may request disclosure of potential conflicts of interest. Nonetheless, after disclosing a conflict or perceived conflict, a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall disclose the nature of the potential conflict of interest, and the reason(s) why he or she is able to act in the matter fairly, objectively, and in the public interest. This shall be noted in the minutes of the proceeding.

Recusal. A Board member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:

1. The applicant or any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.
2. A Board member who has recused him or herself from a proceeding shall not sit with the Board, deliberate with the Board, or participate in that proceeding as a Board member in any capacity.
3. If a previously unknown conflict is discovered, the Board may take evidence pertaining to the conflict, and if appropriate, adjourn to a short deliberative session to address the conflict.
4. The Board may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the Board. The Board may then resume the proceeding with sufficient members present.

Section XI: Ex Parte Communications.

Ex parte communication is prohibited. Any Board member who inadvertently conducts ex parte communication must disclose such communication as required below.

At each hearing, the Chair shall request that members disclose any ex parte communications. Board members who have received written ex parte communications shall place in the record copies of all written communications received as well as all written responses to those communications. Members shall prepare a memorandum stating the substance of all oral communications received, all responses made and the identity of each person making the ex parte communication, which shall become a part of the record of the proceedings.

Section XII: Amendments.

These rules may be amended at any meeting by a majority vote, provided that each DRB member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken.

These Rules of Procedure were adopted by a unanimous vote of the Development Review Board on January 13, 2022.