

**TOWN OF FAIRLEE  
DEVELOPMENT REVIEW BOARD PROCEDURAL RULES  
AND CONFLICT OF INTEREST POLICY**

**Section I: Authority.**

The Development Review Board (DRB) of the Town of Fairlee hereby adopts the following rules of procedure (hereinafter referred to as these Rules) in accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h).

**Section II: Policy.**

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

**Section III: Definitions.**

A. "Board" means the DRB.

B. "Board member" means a regular or alternate member of the DRB.

C. "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 or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
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 or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
3. A situation where a board member has publicly displayed 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 ex parte communications with a party in a proceeding before the board, pursuant to Section XII of these Rules.

D. "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

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session be publicly noticed. By motion and majority vote, the board may enter deliberative session during a hearing to consider a matter before it.

E. "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.

The legislature has identified a number of reasons to enter executive session. One category, which includes consideration of contracts, civil actions, mediation, arbitration, and labor relations agreements, requires a special review before executive session is justified. The law requires the board to conclude that "premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage" before voting on executive session in these cases.

Other reasons to go into executive session are:

- The negotiating or securing of real estate purchase options;
- The appointment or employment or evaluation of a public officer or employee;
- A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;
- A clear and imminent peril to the public safety;
- Discussion or consideration of records or documents that are not public documents under the access to public records act. However when the board discusses or considers the excepted record or document it may not also discuss the general subject to which the record or document pertains;

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

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

H. "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.

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

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**Section IV: Regular Officers.**

The DRB shall consist of five regular members appointed by the Select Board. After Town Meeting but prior to May 1, or at other times throughout the year as needed, the DRB shall hold an organizational meeting and elect by majority vote, a Chair and Vice Chair.

A. The Chair shall preside at all meetings, hearings, and deliberations, 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.

B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, or at the Chair's request. In the absence of the Chair and Vice Chair, a member of the Board shall call the meeting to order and the first item of business shall be the selection, by majority vote, of an Acting Chair for the meeting.

C. It shall be the duty of all members to review the minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.

D. The Clerk shall be responsible for taking minutes and maintaining the official record of all meetings of the Development Review Board. The minutes shall include all topics and motions of the Development Review Board and shall otherwise comply with 1 V.S. A., Section 312(b). In the absence of the Clerk that task shall be delegated to one of the Board members present.

**Section V: Alternate Members.**

The Select Board shall annually by April 1<sup>st</sup>, or as needed, appoint up to two alternates who may temporarily serve as DRB members in the event of a recusal or absence of one or more members.

A. 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.

B. If the chairperson of the DRB does not appoint an alternate as required under paragraph A, a majority of the members of the DRB present and voting may appoint an alternate to serve in accordance with paragraph A. An alternate member who is called upon to serve shall be required to be a part of the DRB until a final decision is made on any application heard by the DRB while serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.

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**Section VI: Regular and Special Meetings.**

Regular meetings to conduct business of the DRB shall be held in the Town Hall at 7 p.m. on the second and fourth Tuesdays of the month, or as warranted. The Chair or the Zoning Administrator may cancel meetings at any time.

A. Special meetings may be called by the Chair, provided at least 24 hours notice is given to each member and the time and place of each special meeting is publicly posted in at least three locations at least 24 hours before the meeting.

B. A quorum (3 members) shall consist of a majority of the entire board.

C. Members may participate by telephone as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the board member.

D. All meetings shall be open to the public 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.

E. There shall be an agenda for each meeting, with time allotted for each item or group of items to be considered. Those who wish to be added to the agenda shall contact the Zoning Administrator to arrange for a convenient time. The Zoning Administrator shall determine the content of the agenda.

F. Upon completion of the agenda the Zoning Administrator will make available copies of the agenda together with copies of reports, explanations, etc., that relate to the business matters coming to the Development Review Board. The Zoning Administrator will mail such materials to the members of the Board at least five (5) days prior to the meeting. If the ZA does not mail such materials in a timely manner, then, by vote of a majority of the members of the DRB, the agenda item(s) will not be considered.

G. 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 and/or the time allotted. Agenda times are approximate and will vary. Interested Parties should be present from the beginning of the meeting to speak to a particular item as it is addressed by the Board.

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

I. At each meeting, there shall be a ten minute period of time reserved for public comment near the end of the meeting. The Chair may extend or reduce this period of time

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as necessary. Speakers may participate at other times throughout the meeting but only when recognized by the Chair. Such comment shall be limited to three minutes per speaker, unless by majority consent the board sets a different time limit. The board shall apply consistent time limits to all recognized to speak.

J. Notice for hearings shall be pursuant to 24 V.S.A. § 4444, as amended.

**Section VII: Public Hearings and Order of Business.**

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 three hours in length unless approved by a majority of members present. Public comment may be offered during the hearing with the permission of the chair. Such comment, if recognized, shall be limited to three minutes per speaker, unless by majority consent the board sets a different time limit. The board shall apply consistent time limits to all persons recognized to speak. 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, and make copies of these Rules available.
- C. Request disclosure of conflicts of interest and ex parte communications.
- D. Review the definition of interested persons in 24 V.S.A. § 4465(b).
- E. 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.
- F. Ask all who believe they meet the definition of 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 administrative officer decisions. 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.

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G. 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 but the truth so help me God* (or, *under the pains and penalties of perjury*).

H. Accept written information presented to the board.

I. Invite the applicant or applicant's representative to present such application or proposal.

J. Invite board members to ask questions of the applicant or applicant's representative.

K. Invite interested persons and members of the public to present their information regarding the application or proposal.

L. Invite the applicant or applicant's representative to respond to information presented.

M. Invite more questions or comments from members of the board.

N. Invite more questions from interested persons and members of the public.

O. Allow final comments or questions from the applicant or his/her representative or members of the board.

P. Upon motion and majority approval, the Chair shall either adjourn the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.

Q. The board shall then conduct public deliberations, or may vote to enter deliberative session. See Section III-D of these Rules, 1 V.S.A. § 312(e).

**Section VIII: Site Visits.**

Site visits shall be open to the public for observation only. No testimony or ex parte communication shall occur at any point during the site visit. All comments by the applicant will be directed to the Board and will be in the presence of all Board members in attendance. Site visits shall be held pursuant to the following conditions:

A. If, prior to a hearing, the Chair or the Zoning Administrator 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.

**Comment [DF1]:** Try this? I agree that we need to focus on the principle that NO testimony will be taken at a site visit.

I like this very much! Unless anyone else wants to weigh in with other suggestions, I'm more than comfortable with this language.

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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 IX: Service List.**

The Clerk shall create a list of all individuals who participated. 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 and content of participation by those who participated.
- C. The mailing and/or e-mail address, if they wish to be notified by email, of each of these interested persons.

**Section X: Decisions.**

The board shall make its decisions by public deliberation, unless by majority vote it has determined to make a decision 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. A motion or resolution may be offered by any member of the DRB. All motions must be seconded prior to discussion or consideration. Upon request, a motion or resolution shall be restated before being considered for adoption. All motions except procedural motions and resolutions will be required to be in writing. A request to recess for the purpose of writing out a motion or resolution shall be in order. Each written motion or resolution shall be read by the Chair before the commencement of debate.
- D. All members present are expected to vote unless they have recused themselves.
- E. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- F. For a motion to pass, it must receive the concurrence of a majority (3 members) of the entire board, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).

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G. The board shall issue a decision within 45 days of the final public hearing.

**Section XI: Conflicts of Interest.**

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

**A. 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. 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 DRB.

**B. 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.

**C. 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.

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**Section XII: Ex Parte Communications.**

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

A. **Disclosure.** 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 XIII: Removal.**

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

**Section XIV: Amendments.**

These rules may be amended at any regular or special 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.