

TOWN OF MAIDSTONE, VERMONT
Zoning Board of Adjustment (ZBA) and Planning Commission (PC)
Rules of Procedure and Conflict of Interest Policy
Adopted by the Planning Commission on June 14, 2022
Adopted by the Zoning Board of Adjustment on September 13, 2022

Section I: Authority

The Zoning Board of Adjustment and the Planning Commission of the Town of Maidstone 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/Commission 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 Zoning Board of Adjustment (ZBA) or Planning Commission (PC).
- B. "Board/Commission member" means a regular or alternate member of the ZBA or PC.
- C. "Conflict of interest" means any one of the following:
 - 1. A direct or indirect personal interest of a Board/Commission 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/Commission 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/Commission 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/Commission 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. A deliberative session occurs only in conjunction with a quasi-judicial proceeding. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed. By motion and majority vote, the Board may enter deliberative session during a hearing to consider a matter before it. 1 V.S.A. §§ 310 (2) (6); 1 V.S.A. §§ 312 (e) (f)
- 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.
- 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/Commission member.
- H. "Public deliberations" means the weighing, examining, and discussing, in a public proceeding, of 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.

Section IV: Regular Officers

The ZBA shall consist of at least three but no more than nine regular members. After Town Meeting and prior to May 1, or at other times throughout the year as needed, the ZBA shall hold an organizational meeting and elect by majority vote, a Chair, Vice Chair, and Clerk.

- 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. The Clerk shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request.
- C. It shall be the duty of all members to review the minutes and other official records of ZBA meetings and actions, and correct and ratify these when appropriate and necessary.
- D. The Clerk shall take minutes of all meetings, unless delegated to staff.

Section V: Alternate Members

The Selectboard shall annually or as needed appoint alternate members to the ZBA and alternate members to the PC; the same person may be appointed as an alternate member to both the ZBA and the PC. These alternate members of the ZBA and the PC may temporarily serve as members with full voting rights in the event of a recusal or absence of one or more members.

- A. An alphabetical roster of all alternate members shall be kept by the ZBA and the PC. 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 ZBA or the PC, the Chair or his or her designee shall appoint an alternate to serve as an active member by selecting an individual from the roster as provided in paragraph A.
- C. If the Chair of the ZBA or PC does not appoint an alternate as required under paragraph B, a majority of the members of the ZBA or the PC present and voting may appoint an alternate to serve in accordance with paragraph B.
- D. An alternate member who is called upon to serve shall be required to be a part of the ZBA or the PC until a final decision is made on any cause, proceeding, or application heard while the alternate is serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the cause, proceeding, or application has been tabled or adjourned to another date.

Section VI: Regular and Special Meetings

Regular meetings to conduct business of the ZBA and the PC shall be held by Zoom and/or in the Town Hall at 6 p.m. on the second Tuesdays of the months of March, June, September, and November, or as decided by the Board or the Commission at the organizational meeting held after Town Meeting. The Chair 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 announced at least 24 hours before the meeting.
- B. A quorum shall consist of a majority of the entire Board or Commission.
- C. Members may participate by telephone or Zoom as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the absent Board/Commission member.
- D. All meetings shall be open to the public unless the Board or Commission, by majority vote, has entered a deliberative or executive session. The Board or Commission 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 Chair to arrange for a convenient time. The Chair shall determine the content of the agenda.
- F. 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.
- G. The Chair shall rule on all questions of order or procedure and shall enforce these Rules pursuant to 1 V.S.A. §312(h).
- H. At each meeting, there shall be a period of time reserved for public comment near the end or beginning of the meeting, as required, at the Chair's discretion. The Chair may extend or reduce this period of time as necessary. Speakers may participate at other times throughout the meeting but only when recognized by the Chair. Such comment shall be limited as required per speaker, unless by majority consent the Board sets a different time limit. The Board or the Commission shall apply consistent time limits to all persons recognized to speak.
- I. Notice for hearings on the adoption, amendment, or repeal of the bylaw and other regulatory tools 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) and (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 any 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.
- 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 or the Commission.
- I. Invite the applicant or applicant's representative to present such application or proposal.
- J. Invite Board/Commission 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 or Commission 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; 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) and (2).

- B. If necessary, the Board or Commission 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 or Commission 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 IX: Service List

The Clerk or designee 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 or Commission 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 address of each of these persons.

Section X: Decisions

The Board or Commission 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) and (f). Members of the Board or Commission who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in the proceeding. Absent Board/ Commission 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.
- 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 of the entire Board or Commission, regardless of how many are present. 1 V.S.A. §172; 24 V.S.A. §4461(a)
- G. The Board or Commission 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/Commission member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration. A Board/Commission 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 ZBA.
- B. **Disclosure.** At all hearings, the Chair shall request that Board/Commission 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/Commission 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/Commission member who has recused him or herself from a proceeding shall not sit with the Board or Commission, deliberate with the Board or Commission, or participate in that proceeding as a Board/Commission 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 or Commission 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 or Commission may then resume the proceeding with sufficient members present.

Section XII: Ex Parte Communications

Ex parte communication is prohibited. Any Board/Commission 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 or Commission 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 or Commission may request that the legislative body remove a Board/Commission member from the Board or Commission. Board members may be removed for cause by the legislative body upon written charges and after a public hearing. 24 V.S.A. §4460(c). Planning Commissioners may be removed at any time by unanimous vote of the legislative body. 24 V.S.A. §4323(a).

Section XIV: Amendments

These Rules may be amended at any regular or special meeting by a majority vote, provided that each Board/Commission member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken.

See Approved Minutes Planning Commission 2022-06-14

AND

Approved Minutes Zoning Board of Adjustment 2022-09-13