

# **Charlotte Development Review Board Rules of Procedure and Conflict of Interest Policy**

*As adopted by the Charlotte DRB, January 12, 2022*

## **Section I: Authority.**

The Development Review Board [DRB] of the Town of Charlotte 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, 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 their 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 member of the DRB.

C. “Chair” means chairperson of the DRB.

D. “Conflict of interest” means any one of the following:

1. A direct or indirect interest or involvement of a Board member, their spouse, partner, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister-in-law, cousin or other familial relation, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
2. A situation where a Board member has publicly displayed a prejudgment of the merits of a particular proceeding before the DRB. This shall not apply to a member’s particular political views or general opinion on a given issue.
3. 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.
4. A situation in which a Board member qualifies as an Interested Party (as defined in Sec. H, below)

E. “Deliberation” means weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

F. "Executive session" means a session of a public body from which the public is excluded, as authorized by 1 V.S.A. § 313. In addition to other requirements, 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.

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

H. "Interested Persons" are those owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and as further defined per 24 VSA 4465.

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

J. "Public deliberations" means the weighing, examining, and discussing, at an open meeting, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

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

L. "Vice Chair" means the vice chairperson of the DRB.

#### **Section IV: Regular Officers.**

The DRB shall consist of at least five regular members, and up to two (2) alternate members. After Town Meeting and appointments are made by the Selectboard, 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 a 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 both the Chair and the Vice Chair, the quorum of members shall appoint an acting Chair for the meeting.

C. All members will review the minutes and other official records of DRB meetings and actions and correct and ratify these when appropriate and necessary.

D. A recording secretary shall take minutes of all meetings.

**Section V: Alternate Members.** The Selectboard may annually, or as needed, appoint up to two alternates who may temporarily serve as DRB members in the event there is no quorum.

A. Whenever there is not a quorum, the Chair of the DRB, or their designee, shall appoint one of the alternates to obtain a quorum to serve as an active member.

B. If the Chair of the DRB does not appoint an alternate(s) as required under paragraph A, a majority of the members of the DRB present and voting may appoint an alternate.

C. 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 the alternate member serves as an active member. Participation includes attending deliberations and any continuance of a public hearing if the application has been tabled or adjourned to another date.

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

Regular meetings to conduct business of the DRB shall be held in the Town Hall at 7:00 PM on the second and fourth Wednesday of the month, as warranted. Site visits may be scheduled at the convenience of the members. 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 members of the entire Board.

C. Members may participate by telephone or virtual meeting platform, as long as all members 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 proper motion and vote, has entered an executive or deliberative session. The Board may convene a closed deliberative session upon a majority vote. 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, generally structured as follows:

1. Public comment.
2. Public hearings on applications.
3. Deliberations (in open or closed session), if any.
4. Other business – i.e., approval of draft meeting minutes.

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).

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

Public hearings shall be conducted as quasi-judicial proceedings, as defined in 1 V.S.A. § 310(6)(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 vote of members present.

The Chair shall set aside time for interested persons or their duly-authorized representatives and consultants to provide testimony during the hearing -- 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 generally in the following manner, unless a modified procedure is approved by majority vote of the board:

A. Open the hearing by reading the warning of the hearing.

B. Review the order of events, including the time for public comments outside of any hearings, and remind all present that the proceeding will be conducted in an orderly manner. Explain that pursuant to state statute, only interested persons who provide testimony during hearings have the right to appeal DRB decisions to the Environmental Court. Ask the applicant and audience members to record their names and contact information on the sign-in sheet. Explain that anyone wishing to speak must identify themselves and:

***“Affirm that the evidence they are giving in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury.”***

C. Request Board members disclose any conflicts of interest and ex parte communications.

D. Accept written information presented to the Board.

E. Invite the applicant or applicant’s representative to present their proposal.

F. Invite Board members to ask questions of the applicant or applicant’s representative.

G. Invite interested persons to present testimony, comments, feedback and questions regarding the application or proposal. Interested persons may also present testimony from representatives and consultants.

H. Invite the applicant or applicant’s representative to respond to information presented, or to cross-examine interested persons or their representatives and consultants.

I. Invite more questions or comments from members of the Board.

J. Invite more questions or comments from interested persons.

K. Invite final comments or questions from the applicant or their representative, members of the Board and interested persons.

L. Invite interested community members to comment on the project.

- M. Upon motion and majority approval, the Chair shall either adjourn the hearing to a date and time certain, or request a motion to close the proceedings by vote of a majority of the Board.
- N. After the hearing is closed, the Board may begin deliberations – either immediately or at the end of the meeting, or at some other time as determined by the Board. See Section III-E and J. of these Rules and 1 V.S.A. § 312(e).

### **Section VIII: Site Visits.**

If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled and be publicly warned in accordance with 24 V.S.A. §§ 4464(a)(1), (2).

A. 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:

B. If necessary, the Board may recess a hearing to conduct a site visit at a property which is the subject of an application or appeal 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 or appeal 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 staff shall create a list of all individuals who actively participated in the hearing for each application reviewed by the Board. This list shall include those who participated orally, and those who participated in writing. All decisions of the Board shall be mailed or emailed to those on the list, if individuals provided their names and mailing and/or email addresses during the proceedings. The list shall include:

A. The names of those who participated in the proceedings.

B. The mailing address of each of these persons, if disclosed.

Participants who did not sign in at all, did not disclose their names during a hearing, or who fail to provide legible contact information to the staff will not receive a copy by mail or email, except upon written request to the staff.

### **Section X: Decisions.**

The Board shall issue a decision in writing, and may deliberate in public or in private. If it deliberates privately, the Board need not adopt its written decision at an open meeting if the decision will be a public record. The DRB may not hear testimony or consider new evidence during deliberations, but may, in appropriate circumstances, reopen a hearing for such purpose.

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. Members who are absent for a hearing on an application may review recordings of the proceedings, meeting minutes and application materials and choose to participate in decisions on that application. 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 other members and can make motions.
- C. 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, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).
- F. The Board shall issue a written decision within 45 days following the closure of the final public hearing.
- G. The Chair or Vice Chair may sign the decision on behalf of the Board after the decision has been finalized by support staff pursuant to the Board's deliberation and vote.

**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 they have a conflict of interest in the matter under consideration. A Board member shall not, personally or through any member of their 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.

**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 they are 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 they are 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 themselves from any matter in which they have a conflict of interest, pursuant to the following:

1. The applicant or any person may request that a member recuse themselves due to a conflict of interest. Such request shall not constitute a requirement that the member recuse themselves.

2. A Board member who has recused themselves 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. However, a recused member may offer written testimony to the Board on a matter in which they qualify as an interested person, or participate through legal counsel or a duly authorized representative, or to present their own project application.
3. If a previously unknown conflict of interest is discovered, the Board may take evidence pertaining to the conflict, and if appropriate, adjourn to a short executive 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, including any appointed alternates.

## **Section XII: Ex Parte Communications.**

Ex parte communication is prohibited. Any Board member who participates in ex parte communication with an applicant or their representative must disclose such communication as follows:

**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 must disclose each specific instance of ex parte oral contact with applicants, appellants, interested persons or their representatives during the next public meeting/hearing of the DRB, stating the substance of any conversations on a project under review and the identity of each person making the ex parte communication, which shall be noted in the meeting minutes.

## **Section XIII: Conformance with the Open Meeting Law; Electronic Communication and Minutes of DRB Meetings.**

The DRB is a public body bound by Vermont's Open Meeting Law. See 1 V.S.A. §§ 310-314.

A. Group electronic communication (email and texts) may be used to schedule a meeting, create an agenda, or to distribute materials to discuss at a meeting, but may not be used for discussion purposes, and must generally be available for copying and inspection as public records upon written request.

B. Electronic communication may be used in instances where the Board is engaged in a quasi-judicial deliberation – for instance, when the Board is drafting or reviewing a written decision on a permit application. Before taking advantage of this exception, the public body must have conducted a quasi-judicial public hearing, and then commenced deliberations to discuss the evidence and decide how to proceed.

C. Except during executive session, during which minutes will not be taken, a recording secretary shall take minutes of all DRB meetings. Draft DRB meeting minutes shall be posted to the town website within five business days, with copies made available upon request.

D. Members will review the draft minutes and other official records of DRB meetings and actions, and correct and ratify these when appropriate and necessary.

**Section XIV: Removal.**

Upon majority vote, the Board may request that the Selectboard remove a Board member from the DRB. Board members may be removed for cause by the Selectboard upon written charges and after public hearing. 24 V.S.A. § 4460(c). Failure to comply with the conflict of interest provisions of these DRB procedures may form the basis for a request for removal and/or constitute cause for removal.

**Section XV: 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.

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