

# Richmond Development Review Board

## Rules of Procedure

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ADOPTED BY THE RICHMOND DEVELOPMENT REVIEW BOARD  
ON NOVEMBER 13, 2013

## **DEVELOPMENT REVIEW BOARD (DRB) Rules of Procedure and Conflict of Interest Policy**

### **Section I: Authority.**

The Rules of Procedure or "Rules" for the Town of Richmond Development Review Board are here by adopted in accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h) procedural rules related to the conduct of official meetings of this local government body. They can be modified from time to time by formal action of the Richmond Development Review Board or "DRB". The DRB shall follow these rules and make them public upon request.

### **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.

The DRB also hereby adopts the State Wide Uniform Code of Municipal Ethics as part of the DRB Rules of Procedures. Where any conflict exists between the State Wide Uniform Code of Municipal Ethics and the DRB Rules of Procedure, the State Wide Uniform Code of Municipal Ethics shall be followed.

### **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 the following
  - a. "Conflict of interest" means a direct or indirect interest of a municipal officer or such an interest, known to the officer, of a member of the officer's immediate family or household, or of a business associate, in the outcome of a particular matter pending before the officer or the officer's public body, or that is in conflict with the proper discharge of the officer's duties. "Conflict of interest" does not include any interest that is not greater than that of other individuals generally affected by the outcome of a matter.
  - b. 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, minutes, 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.
- 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. A site visit conducted under Section VIII shall not be considered to be ex parte communications.

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- G. "Official act or action" means any legislative, administrative or quasi-judicial act performed by any board member.
- H. "Public (open) deliberations" means the weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes taking additional evidence and arguments.
- I. "Recuse" means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

**Section IV: Regular Officers and Minutes.**

Number of members and alternates; appointment; terms; and terms of members appointed to fill vacancies shall be as provided in 24 V.S.A, Chapter 117, § 4460 and the Richmond Zoning Regulations, as amended. The Richmond Selectboard shall appoint members of the DRB.

- 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. Whenever the Chair and the Vice Chair are absent, or at their request, the DRB members shall elect an Acting Chair to temporarily assume the duties of Chair.
- 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. Town staff shall take the minutes of all meetings, unless delegated to a board member.
- E. Minutes shall be deemed approved on the day they are posted. (**The Board should consider whether they wish to vote on approving the minutes at each meeting**)
- F. In the event that minutes need to be corrected town staff shall make the necessary corrections and provide the updated minutes to the board at their next scheduled meeting for a vote to approve the changes.
- G. Board members may also request changes to the minutes. Such changes shall follow the steps noted in F.

**Section V: Alternate Members.**

The Selectboard shall annually, or as needed, appoint up one or more alternatives to participate in DRB proceedings and serve as voting DRB members in the event of a recusal or absence of one or more members, or as part of the DRB's regular rotation.

- A. 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 unavailable, the DRB Chair shall designate an alternate to serve as an active voting member of the DRB by selecting an individual from the roster as provided in paragraph A.
- C. If the DRB Chair does not designate an alternate as required under paragraph B, a majority of the members of the DRB present and voting may designate an alternate to serve and vote in accordance with paragraph B.
- D. An alternate member who is called upon to vote shall be considered to be a part of the DRB for purposes of an application until a final decision is made on any application heard by the DRB

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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.

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

All meetings of the DRB shall be held at the Richmond Town Center unless the DRB requires a different location (e.g., for purposes of reviewing particular areas of the town). In those cases, meeting places may not be designed to exclude members of the public. The time and place of a special meeting must be designated. 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, Vice Chair and Secretary. Regular meetings to conduct business of the DRB shall be held on the second and fourth (if needed) Wednesdays at 7 p.m. The Chair may cancel meetings at any time due to lack of a quorum of members, inclement weather, or another unforeseen circumstance.

- A. Special meetings may be called by the Chair, provided at least 72 hours notice is given to each member and the time and place of each special meeting is publicly announced at least 48 hours before the meeting.
- B. A quorum shall consist of a majority of the entire board.
- C. Members may participate remotely 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. Those who wish to be added to the agenda shall contact the Town Planner/Staff to the DRB to arrange for a convenient time. The Chair in consultation with the Staff to the DRB 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.
- 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). Should questions of procedure arise, *Roberts Rules of Order* may apply.
- H. At each meeting, there shall be an opportunity for members of the public and interested parties to speak.
- I. Speakers may participate only when recognized by the Chair. The time allotted to each speaker shall be at the chair's discretion. The chair shall apply consistent time limits to all recognized speakers. Such comment shall be limited to agenda items only unless the chair chooses to allow a general public comment at the start of the meeting.

**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.

Opportunity for public comments shall be offered during the hearing on agenda items. The chair shall apply consistent time limits to all speakers. Such comments shall be limited to the item under consideration at the time. The Chair has the right to cut off public comment at their discretion to ensure an orderly meeting.

The Chair shall conduct the hearing in the following manner, although variations in the order and the speakers may vary as necessary:

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- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events, remind all present that the proceedings will be conducted in an orderly manner.
- C. Request disclosure of conflicts of interest and ex parte communications from members of the Board on each agenda item.
- 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.
- G. Direct the applicant or his/her representative and all interested persons to step forward and take the following oath: *I hereby swear or affirm that the evidence I give shall be the whole truth and nothing but the truth.*
- H. Accept written information presented to the board.
- I. Invite the applicant or applicant's representative to present such application or proposal.
- J. Invite DRB 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 DRB.
- 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. The Board shall then conduct public deliberations, or may vote to enter deliberative session. See Section III (D) of these Rules.
- Q. Upon motion and majority approval, the Chair shall either approve the application as presented, adjourn the hearing to a time certain, or close the public hearing and move the application to deliberative session.

**Section VIII: Site Visits.**

Site visits are intended to enhance the DRB's understanding of a proposed development and, as such, are encouraged. Site visits are for observation only and are not appropriate for substantive discussion of the project. Site visits do not constitute a public hearing and no quorum of DRB members is necessary. Attendance at a site visit by a DRB member shall not constitute a conflict of interest. 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. Site visits may be conducted by DRB member(s) assigned as project liaison(s) and the Town Planner/Staff to the DRB with the property owner (or representative). This type of site visit will not be publicly noticed.
- B. If, prior to a hearing, the DRB Chair determines that a site visit with the full DRB is necessary for any hearing before it, the site visit shall be conducted either immediately preceding a hearing or at a date and time determined by the DRB and shall be publicly noticed in accordance with 24

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- V.S.A. § 4464(a)(1) and (2). Should a Board Member be unavailable for a public site visit, that person may conduct an individual site visit (upon approval of the applicant(s), if necessary).
- C. If necessary, the DRB may recess a hearing, or adjourn a hearing to a date/time certain, to conduct a site visit at a property which is the subject of an application before the DRB. In such situations, no additional public notification is necessary.
  - D. Site Visit Policy: The DRB reserves the right to continue a hearing if a site visit cannot be conducted because of weather or other conditions to a time when the site can be viewed. Applicants will be apprised of this upon filing of the application.
  - E. During the public hearing, a DRB liaison or member shall present an oral or written report about any site visit which was held and the minutes of the public hearing shall reference the report regarding who was present, the nature of the site visit, and any relevant observations for the record.
  - F. The attendance of any DRB member in the capacity of the DRB liaison at a site visit shall not, in and of itself, constitute a conflict of interest.

**Section IX: List of Participants.**

The Secretary or staff 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, as described in the meeting minutes or the decision.
- C. The mailing address of each of these persons.

**Section X. Use of Email.**

Email may be used to disseminate information to DRB members and may be used during deliberative sessions for a specific application. However, it should not be used to discuss other DRB businesses. Individual members may email the staff to the DRB to request information. Email exchanges among a quorum of members related to town business should not occur, except during a deliberative session. In the event that such an exchange does occur, it should be disclosed at a public meeting. Richmond does not currently have a policy on the retention of email.

**Section XI: 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 (if available), and all evidence submitted to the Board for its consideration. 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

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- 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).
- 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. 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. Authority to inquire about conflicts of interest. If a municipal officer is a member of a public body, the other members of that body shall have the authority to inquire of the officer about any possible conflict of interest or any appearance of a conflict of interest and to recommend that the member recuse themselves from the matter.
- C. 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.
- D. 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.
- E. 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:
  - a. The board member with a conflict shall disclose the conflict and explain why they need to recue themselves then remove themselves from the board and sit in the area reserved for the public.
  - b. 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.
    - i. Once a request has been made by a member of the public the remaining members of the board shall deliberate to determine whether the member needs to recuse themselves.
    - ii. All remaining members present will need to find in the affirmative that a conflict of interest exist in order to require a member to recuse themselves.
    - iii. If a member of the board accuses another member of the board of having a conflict of interest both members shall be excluded from the deliberations to determine whether a conflict of interest exists.
    - iv. If multiple members are accused of having a conflict of interest then each request shall be heard one at a time per the rules noted above.
    - v. Such deliberations can be conducted in public or in deliberative session at the chairs discretion. Once the board finds that the member or members in question do not have a conflict of interest them they shall be allowed to participate.
    - vi. No further request for recusal of a member or members shall be considered that are found to be substantially similar to the original recusal request.

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1. Such determinations can only be made by the Chair, Vice Chair, or by a member of the board acting as chair.
- F. A board member who has recused him or herself or has been recused per the process noted above 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.
- G. Pursuant to §1992. of the municipal code of ethics a board member may participate in proceedings with a perceived conflict of interest provided they do the following
- a. The officer submits a written non-recusal statement to the legislative body of the municipality regarding the nature of the conflict that shall:
    - i. Include a description of the matter requiring action.
    - ii. Include a description of the nature of the potential conflict or actual conflict of interest.
    - iii. Include an explanation of why good cause exists so that the municipal officer can take action in the matter fairly, objectively, and in the public interest.
    - iv. Be written in plain language and with sufficient detail so that the matter may be understood by the public.
    - v. Be signed by the municipal officer.
    - vi. If an officer's conflict of interest or the appearance of a conflict of interest concerns an official act or actions that take place outside a public meeting, the officer's no recusal statement shall be filed with the clerk of the municipality and be available to the public for the duration of the officer's service plus a minimum of five years.
    - vii. If an officer's conflict of interest is related to an official municipal act or actions considered at a public meeting, the officer's non-recusal statement shall be filed as part of the minutes of the meeting of the public body in which the municipal officer serves.
  - b. If, at a meeting of a public body, an officer becomes aware of a conflict of interest or the appearance of a conflict of interest for the officer and the officer determines there is good cause to proceed, the officer may proceed with the matter after announcing and fully stating the conflict on the record. The officer shall submit a written non-recusal statement pursuant to subdivision a.of Section F. of this section within five business days after the meeting. The meeting minutes shall be subsequently amended to reflect the submitted written non-recusal statement.
- H. 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.
- I. 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 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



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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 legislative body remove a board member from the DRB. Board members may be removed for cause by the legislative body 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.