

**NORWICH DEVELOPMENT REVIEW BOARD
RULES OF PROCEDURE**

Adopted 10-2-14

**ARTICLE 1
GOVERNING RULES**

101 SOURCE OF AUTHORITY

The purpose, functions, organization and procedures of this Development Review Board shall be governed by the provisions of all applicable state statutes, municipal regulations, and these rules.

102 ESTABLISHMENT OF DEVELOPMENT REVIEW BOARD

As used in these rules, the term "Board" shall mean the Development Review Board duly appointed by the legislative body of the Town of Norwich under the authority of 24 V.S.A. Section 4460.

**ARTICLE 2
MEMBERS, OFFICERS AND DUTIES**

201 NUMBER OF MEMBERS, TERMS

The Board shall consist of seven members, appointed to three-year terms by the Selectboard. Terms shall begin May 1 and end on April 30. These members constitute the voting members of the Board unless these rules provide otherwise.

202 ALTERNATE MEMBERS

The Board shall also include three alternate members, appointed to three-year terms by the Selectboard. Terms shall begin on May 1 and end on April 30.

203 ELECTION OF OFFICERS

The Board shall elect, by majority vote, a chairperson and vice-chairperson annually at the first Board meeting following May 1 each year. These officers shall perform the duties prescribed by state law, Norwich regulations, and these rules.

204 DUTIES OF CHAIR

The chairperson shall call the meeting together, preside over all meetings and hearings of the Board, maintain order, decide all questions of order and procedure, subject to these rules, and shall appoint any committees found necessary to carry out the business of the Board. He or she may administer oaths and compel the attendance of witnesses and the production of material germane to any issue before the Board. The chairperson's signature shall be the official signature of the Board and shall appear on all written decisions of the Board.

205 DUTIES OF VICE-CHAIR

The vice-chairperson shall assume the duties and powers of the chairperson in his or her absence. The chairperson shall normally preside at all meetings, the vice-chairperson presiding in the chairperson's absence. When both these officers are absent from a meeting, the voting members present shall decide who shall preside pro tem.

206 ATTENDANCE EXPECTED OF MEMBERS

Attendance is expected from Regular Board members at most meetings. A Board member unable to attend a meeting or hearing should notify the chairperson or clerk 24 hours prior to the meeting or hearing. If a member's total absences exceed 60 percent of the total meetings and hearings during the prior twelve months, the Board may recommend to the Selectboard that the member be removed and replaced.

207 ABSENCES AND ALTERNATE POLICY

Members must notify the clerk as soon as they know they will be unable to attend or participate in a hearing. An alternate member will serve whenever there is a vacancy or conflict of interest of a regular member with respect to an application or appeal. Alternate members shall continue with the assigned case for its duration. The clerk shall maintain a list of alternates and contact alternates to ask them to serve. Alternates shall be initially listed in the order of their birth month. Once an alternate has served or been asked to serve on a case, the alternate's name is placed on the bottom of the list. Upon the need for an alternate, the first alternate on the list shall serve unless unable to participate, in which case the next alternate able to participate shall serve. An alternate shall be considered a voting member of the Board for matters to which that alternate is appointed. An alternate may participate in a hearing as an alternate member but may not participate in deliberations or vote on a decision unless appointed to replace a member no longer participating.

208 VACANCIES AND REMOVAL

Any resignation from the Board shall be submitted to the Selectboard with copies to the chairperson and the clerk. Any vacancy in the membership of the Board shall be filled by the Selectboard. Any resignation from an officer position shall be submitted to the other officers of the Board. An officer of the Board may be removed without cause by a two-thirds vote of the Board. Any vacancy in the offices of chairperson or vice-chairperson shall be filled by election, for the unexpired term, at the next regular meeting of the Board.

**ARTICLE 3
CLERK**

301 CLERK

The Clerk is not a member of the Board. The Zoning Administrator or his/her appointee shall serve in the office of clerk.

302 DUTIES OF THE CLERK

The clerk shall conduct all official correspondence, subject to these rules and at the direction of the Board; shall issue the proper forms, compile all information, maps, and records for the Board's review; shall send out all notices required by law and these rules of procedure; shall keep the minutes of all Board actions and proceedings, showing the vote of each member upon every question, or if absent, disqualified, or failing to vote, shall so indicate; shall include in the minutes the names and addresses of all witnesses, a summary of the facts on which the decision is based and the decision rendered; shall prepare reports and perform other duties as directed by the chairperson of the Board; and shall keep records of its examinations and other official actions.

303 RECORDS

All minutes and records of examinations and other official actions shall be filed promptly with the town clerk as a public record. The clerk shall maintain a file of documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon each question, as part of the records of the Board. All records of the Board shall be public records except if exempted by statute.

**ARTICLE 4
MEETINGS**

401 REGULAR MEETINGS

Regular meetings of the Board shall be held on the first Thursday of each month and as needed at the call of the chair, on the third Thursday of the month, unless the majority of the Board establishes a different schedule for regular meetings. The clerk shall give each member of the Board 14 days prior written notice of any initial hearing on an application or an appeal.

402 SPECIAL MEETINGS

Special meetings of the Board may be called by the chairperson, or upon the request of two members of the Board, for the purpose of transacting any business designated in the call provided that at least 24 hours written notice of the time, place, and business of such meeting shall be given each member and proper notice given to the applicants, interested parties, and the public.

403 ADVANCE DISTRIBUTION OF AGENDA

The clerk shall furnish each voting member with the agenda for the next meeting, together with minutes of the last one and any pertinent documents due for discussion. Delivery of these materials shall be in such a manner so that each member receives them at his home address at least 48 hours before the meeting.

404 OPEN MEETING LAW REQUIREMENTS

All meetings of the Board and its committees shall be duly noticed and open to the public to the extent required by law. Deliberative sessions shall be closed to the public unless the Board votes to conduct deliberative session with the public in attendance.

405 ORDER OF BUSINESS

The order of business at all regular meetings of the Board shall be as follows unless modified by the Chair or a majority of the members present:

- Call to order and roll call.
- Approve agenda.
- Public comment.
- Reading and approval of the minutes of the preceding meeting.
- Administrative issues and calendar.
- Action on held cases.
- Public hearings (when scheduled), action on new cases.
- Old business.
- New business.
- Adjournment.

406 CONTINUING MEETINGS OR HEARINGS

The Board may continue a meeting or hearing if all applications or appeals cannot be disposed of on the day set. No further public notice shall be necessary provided that the date, time, and place of the continued meeting or hearing shall be announced before adjournment.

407 AVAILABILITY AND POSTING OF MINUTES

The clerk shall circulate draft minutes of each meeting by email within 5 days of adjournment. Copies of draft minutes shall be available for public inspection at the Zoning Administrator's office and posted on the Town's website within five calendar days of the meeting. The clerk shall post final minutes of each meeting on the public bulletin board inside Tracy Hall, and file copies with the Selectboard and the Town Clerk.

**ARTICLE 5
VOTING**

501 QUORUM REQUIREMENTS

For the conduct of a meeting or hearing and the taking of any action a quorum must be present, which shall consist of four members, of the Board regular or alternate.

502 CONFLICTS OF INTEREST REGARDING PARTICULAR MATTERS

No Board member shall participate in any hearing or vote on any matter in which he or she has a personal or financial interest, whether direct or indirect, as defined at 12 V.S.A. §61(a) and 24 V.S.A. §1203. For purposes of this section, prohibitions referring to those within the fourth degree of consanguinity or affinity shall refer to the person's spouse, as well as to the person's and the spouse's: parent, child, brother, sister, grandparent, or grandchild.

At the outset of every public hearing, the chairperson shall invite members to disclose any potential conflict of interest he or she may have with regard to the matter before the Board. The chair shall then invite the applicant and any interested party to raise any concerns they may have regarding any member's potential conflict of interest regarding the matter before the Board. The decision to recuse oneself shall be made by the member in question.

Disqualification due to recusal under these circumstances constitutes an excused absence.

503 VOTING BY ABSENT MEMBER

Unless a member has attended all public hearings on a matter or examined the record and become familiar with the evidence presented from an audio recording of the proceedings, he or she shall not participate in deliberative sessions or cast a vote on that matter.

504 MAJORITY VOTE REQUIREMENT

Determinations on any matter before the Board shall require the concurrence of a majority of the voting members of the Board, regardless of any absences, vacancies, or disqualifications not otherwise filled by an alternate.

505 CONTINUANCE

If the Board is unable to obtain the concurrence of a majority of its members on a matter due to the absence of one or more members from the vote, it shall recess and reconvene to deliberate further.

506 RECORD OF VOTES OF MEMBERS

Final vote in deliberative session shall be made part of the written decision.

**ARTICLE 6
FILING OF APPEALS AND APPLICATIONS**

601 SUBMISSIONS OF REQUIRED SUPPORTING INFORMATION

Applications and appeals shall be submitted on, and provide the information requested by, the form prescribed by the Board. Applicants shall provide any additional information, plans, documents, or data as may be deemed necessary for the Board to be fully informed regarding the application or appeal, whether or not such information is called for by the official form. The Board shall not consider any application or appeal unless it has been submitted on the appropriate form with the requested information, together with payment of any applicable fee. Applications must be signed by both the applicant and the property owner.

602 COINCIDENT DISTRIBUTION RULE

All application materials shall be available to the board, abutters, and the public on the day public notice is issued. Materials for the board shall be sent to DRB members by the clerk 10 days prior to the hearing. Any additional materials submitted by the applicant after the time public notice has been issued will not be considered as part of the application unless specifically accepted by a vote of a majority of the DRB at the public hearing. Interested persons, other than the applicant, shall submit filings five days in advance of the public hearing to the Applicant and the Clerk, to allow the board and the applicant time for review.

Public notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained and that participation in the public hearing may be a prerequisite to the right to take any subsequent appeal to the Environmental Court. The notification shall include the specific application type, including whether a subdivision hearing is preliminary, intermediate, or final, to assist all parties in identifying the regulations applicable to the case.

Application materials shall include, at a minimum, all items required by the applicable regulations, completed questionnaires, and density calculations. Optional items include photographs, narratives, drawings, and supplemental materials the applicant wishes the Board to consider.

This rule is intended to ensure the public has effective notice; to provide everyone interested in the application sufficient opportunity to review the application materials in advance of the public hearing; and to promote fair and open land use review proceedings.

**ARTICLE 7
HEARINGS AND REHEARINGS**

701 PRE-APPLICATION PROCEDURE

(a) Any person contemplating submitting an application in accordance with the Norwich regulations is required to meet with Norwich planning and zoning staff prior to submitting an application to receive guidance regarding the application and review process and the standards in effect.

(b) All applicants seeking review or a permit are encouraged to notify abutting landowners and other potentially interested persons prior to submitting an application to ensure that legitimate concerns of neighbors are addressed early in the process.

(c) All applicants are encouraged to submit plans to the Norwich Fire Department, Norwich Public Works Director, and Norwich Conservation Commission for comments prior to submitting an application to the DRB.

702 ASSIGNMENT FOR HEARING

Applications or appeals shall be assigned for hearing in the order in which they are received. Initial hearings shall be scheduled within 60 days of the filing of the completed application or notice of appeal, and the payment of the required fee. A hearing shall be held within 15 days of filing a request for a stay of enforcement.

703 SITE VISITS

(a) The Board, collectively or through a subcommittee, may conduct a site visit to a property that is the subject of a hearing. Interested parties and members of the public shall receive notice of all site visits as required by state law and Norwich regulations; and are entitled to attend such visits.

(b) Site visits are an opportunity for the Board to become familiar with the physical characteristics of the site. Site visits are not hearings. Interested parties may point out relevant conditions and features of the site. The Clerk shall maintain a log of conditions and features so noted. Comments, questions, and the submission of documents by any person should be reserved for the public hearing.

(c) In the event an applicant refuses any party or member of the public access to a duly noticed site visit, the Board shall terminate the site visit and may, at its discretion, (i) prohibit the applicant from introducing evidence regarding specific conditions and features on the site, or (ii) dismiss the application as incomplete.

704 PERSONS ENTITLED TO PARTICIPATE

(a) "Party," for purposes of this Article, means the applicant and "interested persons," as defined in 24 V.S.A. §4465(b).

(b) Pursuant to 24 V.S.A. §4465(b), an interested person includes members of the public in two categories: (i) a person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of the municipality. or (ii) any ten persons who may be any combination of voters or real property owners within the municipality who, by signed petition to the Board, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the Board must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

A majority vote of the Board shall qualify a person as an interested person by virtue of owning or occupying land in the immediate neighborhood, but at a minimum shall include all persons owning property abutting the subject parcel. The Board may grant "provisional interested person status" to a person requesting to be accepted as an interested person. A final decision regarding their status may be made at the end of the hearing. Signed petitions of 10 persons owning land in the municipality should be submitted at least one full day before the hearing date when all 10 persons will not attend the hearing. The petition shall include the name and signature of each property owner and the street address and tax map lot number of the property owned. The petition must designate one person to serve as the representative of the petitioners regarding all matters related to the hearing.

(c) Only interested persons have the right to present evidence, question witnesses, and otherwise participate at hearings. Opportunity shall be given to all interested persons to respond and present evidence and argument on all issues involved.

(d) The Board may permit limited public comment and questions by persons not qualified as interested persons. Such comments and questions shall (i) be relevant to the specific application or appeal at issue; and (ii) not cause undue delay in the conduct of the hearing. Public comment does not constitute evidence.

705 PROCEDURE AT HEARING

The chairperson shall cause the hearings to be recorded. The chairperson may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, if feasible, to see the entire proceeding as it is taking place.

Transcriptions of the proceedings of public hearings shall be made upon request and payment of the reasonable costs of transcription by any party.

706 EVIDENCE

All testimony of parties and witnesses must be made under oath or affirmation. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The rules of evidence used in Vermont courts shall not apply unless otherwise required by law. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

707 EX-PARTE COMMUNICATIONS

Board members shall not communicate, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the application or appeal, on any issue in the application or appeal, while it is pending, without notice and opportunity for all parties to participate. Any Board member who receives an ex-parte communication on any issue relating to the proceeding shall place on the record all written communications received, all written responses to those communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex-parte communication.

708 APPEALS

Appeals from a decision of the Board shall be taken in the manner established under applicable statutes and rules of the Vermont courts.

709 RECONSIDERATION

An application for rehearing or reconsideration may be made in the same manner as provided for the original application or appeal. The Board may reject any application or appeal without hearing and render a decision thereon, which shall include findings of fact, within 10 days of the date of filing of the application or notice of appeal, if (i) the board considers the issues raised by the application or appeal have been decided in an earlier case; and (ii) there has been no substantial change in the evidence, facts, or circumstances of the case.

**ARTICLE 8
MUNICIPAL ADMINISTRATIVE PROCEDURE ACT
“ON THE RECORD” REVIEW**

- 801 MAPA
On May 9, 2007, the Norwich Selectboard adopted MUNICIPAL ADMINISTRATIVE PROCEDURE ACT (MAPA) (24 V.S.A. § 1201 et seq.) for all DRB hearings warned after August 1, 2007. All procedural requirements for MAPA are incorporated in these Rules of Procedure.
- 802 “On the Record” Review
On May 9, 2007, the Norwich Selectboard adopted “On the Record” Review of all appeals of DRB decisions for hearings warned after August 1, 2007. (24 V.S.A. §4471(b)). The Environmental Court review will be based on Rules for Environmental Court Proceedings, Rule 5(h)(1).

**ARTICLE 9
DECISIONS**

- 901 FORM OF DECISION
A final decision on any application or appeal shall be approved by a majority of the members of the Board and signed by the chairperson. The decision shall be in writing and shall separately state findings of fact and conclusions of law, identifying all supporting evidence relied upon in reaching its conclusion. Findings of fact shall be based exclusively on the evidence of record. Conclusions of law shall be based on the findings of fact. The decision may include conditions binding on the applicant.
- 902 NOTICE OF DECISION
The clerk shall send the applicant a copy of the decision by certified mail at the mailing address set forth in the application. The clerk shall also mail copies to interested persons who appeared at the hearing and submitted a written request for a copy of the decision. A copy of the decision shall be filed with the Town Clerk as a part of the public records. The date of the mailing and filing of each decision shall be entered in the official records of the Board.

**ARTICLE 10
GENERAL RULES**

- 1001 APPLICATION
These rules of procedure create only procedural rights and impose only procedural duties. They are in addition to those created and imposed by applicable statutes and Norwich regulations.

1002 ADOPTION OF THESE RULES OF PROCEDURE

Upon adoption of these rules, the clerk shall file a copy of them and all amendments with the town clerk as a public record and post a copy in one or more public places.

1003 AMENDMENTS TO RULES OF PROCEDURE

These rules may be amended at any regular meeting by a majority vote of the Board provided that such amendment has been presented in writing to each member of the board at least 72 hours preceding the meeting at which the vote is taken.

1004 ROBERTS RULES OF ORDER

Other than hearings on applications or appeals, meetings of the Board shall be conducted, at the discretion of the chairperson or at the request of any two members, according to the current version of Robert's Rules of Order used for small boards.

1005 PUBLIC E-MAIL DISTRIBUTION LIST

The clerk shall maintain a public e-mail distribution list. Any member of the public may be added to the recipient list by submitting a written request to the clerk. The clerk will keep a notice informing the public how they may join the recipient list posted on the Tracy Hall Bulletin Board.

The public e-mail distribution list is maintained solely as a convenience to the public. NZR §16.3 and NSR §4.3 set out the public notice requirements concerning DRB hearings. Nothing in this policy replaces or extends those public notice requirements. There is no commitment or obligation to distribute any notices, documents or other information to the public e-mail distribution list. Members of the public are warned not to rely on the public e-mail distribution list for receipt of official or statutory notices.

The clerk should distribute the following to the public e-mail distribution list: (a) draft meeting minutes, at or about the time such drafts are distributed to members of the DRB; (b) agendas, approved meeting minutes, notices of hearings on an application or appeal, and notices of meetings, at or about the time any such items are posted on the Tracy Hall Bulletin Board; (c) notices about workshops and conferences open to the public relating to land use as the Zoning Administrator may request; and (d) such public documents as the chair and the clerk shall agree or the DRB requests. No other items shall be distributed to the public e-mail distribution list.

NORWICH DRB RULES OF PROCEDURE *10/2/14*

Distributions on the public e-mail distribution list should include the following disclaimer:

“This public e-mail distribution list is maintained as a convenience to the public and as an informal and unofficial means to distribute information about Norwich Development Review Board business. All official notices are posted on the Tracy Hall Bulletin Board.

The Norwich Development Review Board adopted these rules of procedure on October 2, 2014.

_____ /s/ John Lawe 10/02/14
Chairperson Date

_____ /s/ Phil Dechert 10/02/14
Clerk Date