

TOWN OF DERRY PLANNING BOARD POLICY AND PROCEDURES

ARTICLE I - PERSONNEL

The Planning Board for the Town of Derry shall be established as regulated by the New Hampshire RSA 673 and 676 and the Town Charter as pre-enacted or subsequently amended.

SECTION 1 - Membership - Shall consist of 9 members to include:

- a. The Town Administrator or his/her designee.
- b. A member of the Town Council, selected by the Council shall be an ex-officio member.
- c. Seven (7) persons appointed by the Town Council as regular members. Appointments shall be for 3 years, such terms to be staggered.
- d. Three (3) alternate members appointed by the Town Council. Appointments shall be for 3 years, such terms to be staggered.
- e. Ex-officio alternate member shall be appointed by the Town Council. Term shall be the same as that of the ex-officio member.
- f. At a meeting, alternates who are not activated to fill the seat of an absent or recused member, or who have not been appointed to fill the unexpired term of a vacancy, may participate with the Board in a limited capacity. During a public hearing, alternates may view documents, listen to testimony, ask questions and interact with other board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Alternates may participate in deliberations by the Board, but may not vote. At all times, the Chair shall fully inform the public of the status of any alternates present and identify the members who will be voting on the application.
- g. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made.

SECTION 2 - Officers - The officers of the Board shall consist of a Chairman, Vice-Chairman and a Secretary who shall be elected at the annual meeting.

- a. Chairman: The Chairman shall be elected annually by a majority vote of the Board in the month of April. He/she shall preside over all meetings and hearings, appoint such committees as directed by the Board and sign all plans approved.

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- b. Acting Chairman: In the absence of the Chairman, the order of succession shall be:
 - 1. Vice-Chairman
 - 2. Secretary
 - 3. Or shall be elected by the members present.
 - 4. No ex-officio member shall act as Chairman.
- c. Vice-Chairman: The Vice-Chairman shall be elected annually by a majority vote of the Board in the month of April. In the absence of the Chairman, he/she shall preside at all meetings of the Board and perform the duties of the Chairman.
- d. Secretary: The Secretary shall be elected annually by a majority vote of the Board in the month of April and shall have full charge of all plans and files during the meeting, and shall sign all approved plans.
- e. Acting Secretary: In the absence of the Secretary, an acting Secretary shall be appointed by the Chairman, who will perform all duties of the Secretary.
- f. Clerk of Records: The Clerk of Records shall be part of the personnel of the Planning Department and shall be responsible for the official recording and maintenance of the minutes of meetings and public hearings; also all public notices and mailings.
- g. All officers shall serve for one year and shall be eligible for re-election.
- h. The Chairman or acting Chairman shall decide which alternates shall be seated; alternates shall be seated on a rotating basis.
- i. Officers shall be regular members of the Planning Board.

SECTION 3 -Vacancies

- a. Officers: Should the office of Chairman, Vice-Chairman or Secretary become vacant, the successor shall be elected by the majority members present at the next regular meeting to serve the unexpired term of said vacancy.
- b. Members: In the event of a vacancy, the Town Council shall appoint a new member.

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SECTION 4 - Code of Conduct for Planning Board Members

a. When acting upon subdivision, site plan or conditional use permit applications, the Planning Board is acting in a quasi-judicial capacity. As such, the members are expected to base their decisions upon the record of public testimony, documents submitted in connection with the application, reports of engineers and other experts, and other proceedings of duly noticed public hearings. Members may also use their personal knowledge of the community and of the parcels of land under consideration, as input to the public deliberations and decision making process. All Planning Board decisions on applications must be based on the level of compliance with the Town of Derry Land Development Control Regulations, the Town of Derry Zoning Ordinance, and NH State Law, as reasonably interpreted and applied by the Planning Board.

b. Members should not engage in conversations about the merits of applications with interested parties or the general public except at Planning Board meetings. When such conversations or other exchanges of information occur, the members have an obligation to disclose the content of the communication at the next Planning Board meeting, and to provide copies of any documents or correspondence received by the member to the Planning Director, Planning Board Clerk of Records, or Planning Board Chairman.

c. Members are permitted, and encouraged, to request additional information that they feel is important to reach an informed decision on any application, by making a request for such information to the applicant at meetings of the Planning Board, or to the Planning Board Chairman or the Planning Director. Requests for information that would incur additional cost to the applicant or to the town shall be subject to approval by the Planning Board or the Planning Director. Any such information shall be routed through the Planning Office and provided to all members.

d. All proceedings of the Planning Board, and any of its committees, are subject to the provisions of NH RSA 91A, the "Right to Know Law". As such, any discussion of official business involving a quorum of the Planning Board, whether or not at a noticed and scheduled meeting, are a meeting under, and subject to the requirements of, the Right to Know Law. Members should avoid participating in any meeting as defined in RSA 91-A:2 that is not duly noticed to all the members of the Board.

e. The members of the Planning Board are subject to the provisions of NH RSA 673:14 I, with respect to the potential for a conflict of interest. If a member has a direct or personal financial interest in the outcome of the application that is different from that of the general public, or if a member would be disqualified to sit on a jury hearing the subject matter of the application, the member has a conflict of interest, or if a member has expressed an opinion directly relating to the merits of an application, that member may be subjected to recusal from

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participation in the matter in accordance with the procedure set forth in RSA 673:14, II.

f. No member or officer of the Planning Board shall represent the official position of the board in any matter, unless authorized by a resolution of the Planning Board, approved by majority vote of the board at a duly noticed public meeting, authorizing the member or officer to make such representations or take such actions on behalf of the board. Exceptions to this provision include any responsibilities specifically assigned under the Town Charter, Town Ordinance or State Law.

g. In order to faithfully fulfill their obligations under this section and under NH State Law (RSA 673:3-a, Training), all members of the Planning Board shall take advantage of the various land use regulation training seminars sponsored each year by the State and other planning agencies. Each member shall complete at least one training session related to land use planning per year. A copy of the completed certificate, and/or registration, and/or notification of participation, shall be provided to the Clerk of Records.

h. Pursuant to Town of Derry Ordinance, Chapter 28, Electioneering, Board members and alternates are prohibited from electioneering while sitting and performing official duties on a Board. This includes utilizing municipal channels of communication, acting in a way specifically designed to influence the vote or any question or office, wearing clothing or paraphernalia that a reasonable person would believe explicitly advocates for or against any candidate, political party or measure; distributing or posting any material or form of communication that a reasonable person would believe explicitly advocates for or against any candidate, political party or measure.

ARTICLE II - MEETINGS

SECTION 1 - Annual Meeting

The annual meeting shall be held on the first Wednesday in April for the purpose of electing officers and to review the POLICY & PROCEDURES. Officers shall be elected by a majority vote of the members present and voting.

SECTION 2 - Regular Meetings

Regular meetings shall be held on the first and third Wednesday of each month at 7:00 P.M. at the Derry Municipal Center, 14 Manning St, 3rd floor meeting room unless otherwise specified. Members should notify the Planning Dept. if they are

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unable to attend. Provided there is a physical quorum of members present, participation may be by electronic means.

SECTION 3 - Special Meetings

Special meetings may be called by the Chairman, or in his absence, by the Vice-Chairman, at the request of 3 members of the Board provided public notice and notice to each member is given at least 48 hours in advance of the time of such meeting.

SECTION 3.1 – Joint Meetings

- a. The Board may hold joint meetings with other land use Boards pursuant to RSA 676:2. Whether to hold a joint meeting shall be at the discretion of the Board.
- b. Joint business meetings with any other land use Board shall be held at any time when called jointly by the Chair of the two Boards.
- c. A public hearing on an application before the Planning Board will be held jointly with another Board under the following conditions:
 - a. An applicant seeking a local permit has petitioned two or more land use boards to hold the joint meeting or hearing and the subject matter is within the responsibility of those land use boards.
 - b. The Planning Board Chairman shall Chair the joint meeting.
 - c. Procedures for joint meetings or hearings related to testimony, notice of hearing and filing of decisions is consistent with the applicable RSAs

SECTION 4 - Workshops

Workshops will be held at the regular meetings on the first and third Wednesday of the month at 7:00 p.m. at the Derry Municipal Center, 3rd floor meeting room unless otherwise specified.

SECTION 5 - Conduct of Meetings

- a. Quorum: A quorum for all meetings of the Board shall be five (5) members, including alternates sitting in the place of members.

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- b. Rules of Order: Robert's Rules of Order (Revised) shall form the basis for conduct of meetings. Understanding that literal application of Robert's Rules is only practical for large parliamentary bodies; the Board may operate under a simplified version as modified by the Chairman. The Chairman shall not make or second motions, but shall be eligible to vote on all motions. The Chairman shall ensure that any motion before the Board has been clearly stated, and request restatement of the motion if required, prior to a vote on the motion.
- c. Suspension of the Rules: Any member of the Board may move to suspend the rules, including procedural provisions of this document or of Robert's Rules as interpreted by the Chairman, as may be necessary or desirable for the purpose of reaching a decision on any matter pending before the Board, subject to the constraints of Town Ordinances and State Law. An affirmative vote of a two-thirds majority of the members present and voting shall be required to suspend the rules.
- d. Disqualifications: Where a member of the Board has a personal, financial, or other conflict of interest in a plan before the Board, said member shall disqualify him/herself from taking any part in the discussion or action which may be taken. The disqualification shall be announced by either the Chairman or the member disqualifying him/herself before the beginning of the public hearing on the plan. The member disqualifying him/herself shall absent him/herself from the Board table during the public hearing and during all deliberation on the plan. This will be duly noted in the minutes of the meeting or hearing.
- e. Qualifications: Late arrivals shall not be seated or permitted to vote on a plan once that plan has been called to the table.
- f. Manner of Voting: At the discretion of the Chairman, the voting on all motions shall be by show of hands, voice vote or by roll call of the members, of which the yeas, nays, and abstentions shall be recorded in the minutes. Any nays, abstentions, and recusals shall give an explanation and that explanation shall be recorded in the minutes.
- g. Conduct of Members: No personal attacks shall be made by any member of the Board against any other members or anyone appearing before the board
- h. Meeting Times: Meetings of the Board begin at 7:00 p.m. and are scheduled to end by 10:00 p.m. At 9:30 p.m. the Board will assess the agenda items remaining to be discussed. The Board reserves the right to reschedule agenda items to the next scheduled meeting.

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SECTION 6 - Order of Business

At a regular meeting the following shall be the order of business:

1. Pledge of Allegiance
2. Call to order by the Chair
3. Introduction of members
4. Seating of alternates
5. Appointment of Acting Secretary (if Secretary is absent)
6. Administrative business
7. Agenda
8. Board member comments (limited to 3 minutes)
9. Adjourn
10. Signing of approved plans (if any)

SECTION 7 - Applications

- a. All applications shall be processed by and with the forms provided by the Planning Department. Notice of meetings shall be provided on the Town of Derry website, at the Town Hall, and at the Derry Libraries. Notice of public hearings are also provided in a newspaper of general circulation.
- b. Information relevant to the technical review of an application which is scheduled for a vote by the Planning Board must be submitted to the Planning Board Clerk no later than 4:00 pm three [3] business days prior to the meeting at which action by the Board is scheduled.

Such information shall be made available to the members of the Board and the Public at the Derry Municipal Center, Office of the Director of Planning no later than 48 hours prior to the scheduled meeting. The Board may suspend this rule to accept any new information by a majority vote of the Board. An exception to this rule may be made at the discretion of the Chairperson, provided such information is read publicly into the record.

If information is presented to the Board after the deadline and the Board does not suspend the rules, a vote shall be continued until the next regularly scheduled meeting provided such continuance does not extend beyond the times required for action as stated in Section 170-15 A or D of the Land Development Control Regulations. (*"In effect, if new information is presented and the Board votes to not suspend its rules and the next regularly scheduled meeting is after the required action date by the Board, the new information shall not be considered by the Board."*)

- c. Upon submission and acceptance of the application and all appropriate fees, there shall be no revisions allowed prior to the scheduled meeting.

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- d. All applications shall be subject to review by the Town's outside consulting firm with the exception of land transfer and lot consolidation plans, plans that would be considered a minor subdivision, or plans at the discretion of the Planning staff that do not require outside consulting engineering review.
- e. All applications shall comply with the Derry Zoning Ordinance and the Land Development Control Regulations.
- f. All applications, upon final approval, shall be subject to field inspections by the engineering staff of the Derry Public Works Department or the Planning Board's outside consulting engineering firm.
- g. Pursuant to RSA 36:56, the Planning Board shall vote on whether a project is of regional impact. The Board shall take the following criteria into consideration when making the determination, based on staff recommendation, as to whether a project has regional impact or not.
 - 1. Is the proposed development directly adjacent to a municipal boundary?
 - 2. Is the proposed development located within 1,000 feet of any aquifer or surface waters that transcend municipal boundaries **and** will there be either a large water withdrawal (defined as 57,600 gallons by NHDES) **or** will there be indoor, outdoor, or underground storage of chemicals or other potential pollutants?
 - 3. Is the proposed development creating a new road or a point of access between municipalities?
 - 4. Is the project a proposed non-residential development that will generate 500 or more vehicle trips per day into an adjacent community as determined by the most recent published version of the ITE Trip Generation Manual?
 - 5. Is the proposed development of 200 or more residential dwelling units where any portion of the development is within 1,000 feet of a municipal boundary?
 - 6. Is the proposed development anticipated to have emissions such as light, noise, smoke, odors, or particles that may impact a neighboring community?
 - 7. Will the project impact shared facilities such as schools (i.e., residential developments where Derry's students are tuitioned in another municipality), solid waste disposal facilities, or other utilities located in another community?

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For each application, the Planning staff shall review the above listed criteria and render an opinion on whether the plan does or does not meet the threshold for a Plan of Regional Impact and include that recommendation in the Staff Report.

During the public hearing, the Board shall make a motion in the affirmative to determine that the plan is of regional impact and shall vote yes or no on that motion, based on information in evidence, including the recommendations of the Staff Report.

SECTION 8 - Improvement Security

- a. The Planning Board shall be the agency to accept and release all improvement securities.
- b. The Planning Board may delegate to the Public Works Department the responsibility of determining the amount of the Improvement Security.
- c. The Public Works Department shall maintain all records pertaining to Improvement Securities.
- d. The Public Works Department shall submit a monthly report on Improvement Securities that are due to expire within 90 days.

SECTION 9 - Procedure For Proposed Changes To The Town's Zoning Ordinance and/or Land Development Control Regulations

- a. Any requested change to or deletion of a part or parts of the Zoning Ordinance or Land Control Regulations must be initially presented as a discussion item at a regularly scheduled Board meeting. The sponsoring individual will be responsible for all research both before and after the initial presentation. This is to include any and all changes necessary to produce a final draft for consideration at a public hearing. The sponsor shall also be responsible for providing, in writing, a view of why the changes are necessary and what they will accomplish for the Town.
- b. No request for changes to either the Zoning Ordinance or Land Control Regulations may be accepted for a public hearing without at least one workshop session devoted to consideration of the request. This will provide time for appropriate changes to be made.

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SECTION 10 – Procedure for Reconsideration of a Planning Board Decision

- a. The Board may reconsider its own decision within the statutory time period for appeal to the Superior Court.
- b. The motion to reconsider must be made by a member who was on the prevailing side of the decision to be reconsidered.
- c. Upon an affirmative vote to reconsider, the Board shall determine a date and time certain to reconsider the matter. The Board may take up the matter immediately.
- d. Deliberation upon the matter must clearly define why the Board felt its prior decision was unclear, unreasonable, or that the Board was not in possession of all the facts required to make a determination.

ARTICLE III - AMENDMENTS

These rules of procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two (2) successive meetings immediately preceding the meeting at which the vote is to be taken; a copy to be filed with the Town Clerk.

The provisions of this **POLICY and PROCEDURES** shall be subject to any applicable federal, state or local laws, regulations or ordinances.

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RECORD OF AMENDMENTS

ARTICLE/SECTION AMENDED	SUBJECT MATTER	EFFECTIVE DATE
Article II, Section 7, Applications	Add item "e" to incorporate field inspections by the town's outside consultant	March 31, 1993
Article II, Section 9, Procedure for Proposed Changes to the Zoning Ordinance	Add Section 9, Procedure for proposed changes to the Zoning Ordinance	October 16, 1995
Various Sections	"Mayor" be replaced with Town Council; Section 2 corrected to read "first and third"; Section 4 corrected to note the location of the meetings on the second and fourth Wednesdays	October 16, 1995
Article I, Section 2, Officers	Amend subsection "e", Acting Secretary to note this position is to be appointed by Chair	April 19, 2006
Article I, Section 2, Officers	Amend subsection "i", Officers – shall be regular members of the Board	April 19, 2006
Article II, Section 1, Annual Meeting	Amend – officers are elected by a majority of members present and voting	April 19, 2006
Article II, Section 5, Roberts Rules	Amend – Revised edition, allow modification of Rules by Chairman; clarifies Chair cannot make or second motions	April 19, 2006
Article II, Section 5, Conduct of Meetings	Add subsection "c", Suspension of the Rules, renumber subsequent subsections	April 19, 2006
Article II, Section 6, Order of Business	Amend item 5, Order of Business – Acting Secretary is appointed by the Chairman	April 19, 2006
Article II, Section 7, Applications	Amend subsection "e" to state field inspections are performed by DPW or consulting engineer	April 19, 2009
Article II, Section 8, Improvement Security	Amend – Board is agent to accept/release project security (escrow)	April 19, 2006

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ARTICLE/SECTION AMENDED	SUBJECT MATTER	EFFECTIVE DATE
Article I, Section 4, Code of Conduct for Planning Board Members	Add section, Code of Conduct for Planning Board members	May 17, 2006
Article II, Section 7, Applications	Add new subsection "b", renumber the subsequent subsections	May 17, 2006
Article 1, Section 1, Membership	Amend subsection "a" to state Town Administrator or designee	May 06, 2009
Article 1, Section 1, Membership	Amend to note Town Administrator's designee is to be approved by Town Council	May 06, 2009
Article II, Section 1, Annual Meeting	Change to second Wednesday in April	May 04, 2011
Article II, Section 2, Regular Meetings	Change to second and fourth Wednesday	May 04, 2011
Article II, Section 4, Workshops	Change to held at regular meetings, second and fourth Wednesday	May 04, 2011
Various	Change "Community Development Director" to "Planning Director"	May 09, 2012
Article I, Section 1, Membership	Add subsections "g", "h", outlining role of Alternates	May 09, 2012
Article II, Section 1, Annual Meeting	Changes Annual Meeting back to first Wednesday in April	May 09, 2012
Article II, Section 2, Regular Meetings	Changes regular meeting dates back to first and third Wednesday of the month	May 09, 2012
Article II, Section 4, Workshops	Changes workshop dates to first and third Wednesday of the month during regular meetings	May 09, 2012
Article I, Section 1, Membership	Amend section to note Town Administrative Representative is designated by Town Administrator; membership is 7 full time members; all per Town of Derry Charter amendment	May 15, 2013
Article II, Section 10, Reconsideration of Planning Board Decision	Add a subsection outlining process for a request to reconsider a Planning Board decision	May 15, 2013

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ARTICLE/SECTION AMENDED	SUBJECT MATTER	EFFECTIVE DATE
Article 1, Section 4, Code of Conduct	Amend subsection "G" to remove specific naming of agencies and replace it with 'the State and other planning agencies'	May 17, 2017
Article II, Section 5, Conduct of Meetings	Amend subsection "g", to specify any "nays, abstentions or recusals" must include an explanation to be recorded in the minutes.	May 17, 2017
Article II, Section 7, Applications	Amend subsection "d" such that a plan that could be considered minor did not require outside consultant review, decision at discretion of Planning staff.	April 17, 2019
	Add Record of Amendments	June 17, 2020
Article I, Section 1, Membership	Amend subsection "e", Acting Secretary to insert missing word and clarify Acting Secretary assumes all duties of Secretary	June 17, 2020
Article II, Section 5, Conduct of Meetings	Delete subsection "d", Members Absent, and renumber remaining subsections. This duplicates Article I, Section 2 (h)	June 17, 2020
Article I, Section 4, Code of Conduct	Amend subsection "g" to add requirement for annual training	May 05, 2021
Article I, Section 4, Code of Conduct	Add subsection "h", regarding Electioneering	May 05, 2021
Article II, Section 7, Applications	Add subsection "g", regarding developments of regional impact	March 16, 2022
Article I, Section 1, Membership	Amend subsection "e" to include Town Council Liaison Alternate	July 20, 2022
Article II, Section 2, Regular Meeting	Amend to allow electronic participation by members	July 20, 2022
Article II, Section 3.1, Joint Meetings	Add section to include procedure for joint meeting with other land use boards	July 20, 2022
Article II, Section 5, Conduct of	Add subsection "h" to clarify	July 20, 2022

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Meetings	meeting end times	
Article II, Section 6, Order of Business	Insert new item 8, Board Member Comments and renumber accordingly	July 20, 2022
Article II, Section 7, Applications	Amend subsection “a” to include posting of meetings	July 20, 2022