

MONTPELIER DEVELOPMENT REVIEW BOARD – RULES OF PROCEDURE

I. ESTABLISHMENT OF RULES OF PROCEDURE

- A. Authority: The Development Review Board of the City of Montpelier shall be governed by the provisions of all applicable state statutes, the Montpelier Zoning and Subdivision Regulations and these Rules of Procedure as adopted by the Board on November 26, 2001.
- B. Adoption of These Rules: The Development Review Board Rules of Procedure shall be those adopted by the Board in accordance with 24 VSA §4462. Upon adoption of the rules, the Zoning Administrator shall file a copy of these rules and all amendments with the City Clerk as a public record and post a record in one or more public places.
- C. Amendments: These rules may be amended at any regular meeting by an affirmation vote of a quorum of the Board provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.

II. OFFICERS AND DUTIES

- A. Chairperson: The Board shall elect a chairperson from among its members by a majority vote annually in the month of January. The Chairperson shall perform the duties prescribed by State law, the City of Montpelier bylaws, and these rules.
- B. Duties of the Chairperson: The Chairperson shall call the meeting together, preside over all meetings and hearings of the Board, put all questions, maintain order, decide all questions of order and procedure subject to these rules. The Chairperson may administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chairperson shall appoint Alternate members to serve in the absence of regular members.
- C. Signature: The Chairperson's signature shall be the official signature of the Board and shall appear on all decisions of the Board which were made at meetings of the Board when the Chairperson was present and presiding. The Vice Chairperson's signature shall appear on all decisions of the Board which decisions were made when the Chairperson was not present or when the Chairperson was not presiding.
- D. Vice Chairperson: The Board shall elect a chairperson from among its members by a majority vote annually in the month of January. The Vice Chairperson in the Chairperson's absence or when the Chairperson is not presiding shall perform all of the duties of the Chairperson.
- E. Alternate Members: Alternate members will serve when there is a vacancy or conflict of interest of a regular member. Alternate members shall continue with an application for the duration of its review. Regular members will rejoin the Board after the Alternate member steps down following final action on the continued application to participate in remaining new applications before the Board.

F. Secretary: A Secretary, who may or may not be a member of the Board, and may be designated as the Department of Planning and Development, shall be appointed by a majority of the Board. The Secretary shall perform the following duties:

(1) 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; and shall include in the minutes the names and addresses of all witnesses, and a summary of the facts on which the decision is based and the decision rendered.

(2) Preserve and keep the records of the Board's examinations and other official actions by causing those to be given into the custody of the Zoning Administrator;

(3) Cause to be filed all minutes and records of examination and other official actions with the City Clerk as a public record. (The Secretary may use the Zoning Administrator to transmit those minutes and records of examination and official actions to the City Clerk.)

G. Zoning Administrator: The Zoning Administrator, or his/her designee, who shall not be a member of the Board, shall be the administrative officer for the Development Review Board. In that role the Zoning Administrator shall be responsible for the orderly and efficient administrative processes concerning all aspects of the Board's function and have the following duties:

(1) Conduct official correspondence subject to these rules and at the direction of the Board;

(2) Shall issue the proper forms; compile all information, maps, and records for the Board's review;

(3) send out all notices required by law and these rules of procedure;

(4) Shall inform persons who come before the Board on these rules of procedure and the bylaws which pertain to that person's appearance before the Board;

(5) Receive all minutes and records of examination and other official actions from the Secretary of the Board and see they are properly filed with the City Clerk; and

(6) Maintain copies of the minutes and records of examination and other official actions of the Board separate and apart from those filed with the City Clerk.

H. Vacancies: The Zoning Administrator or his/her designee shall give immediate notice of any vacancy of the Board to the municipal legislative body. If the office of Chairperson becomes vacant, the Board shall fill that office by election for the unexpired term at the next regular meeting of the Board.

III. GENERAL RULES

A. Attendance: A majority of the Board may request that the legislative body remove a Board member if;

- (1) A Board member misses 3 consecutive regular meetings; or
- (2) In the course of 6 consecutive calendar months is absent for 40% or more of the total meetings and hearings held within that period.

B. Records: A file of all documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon each question shall be kept by the Zoning Administrator as part of the records of the Development Review Board. All records of the Board shall be public records.

C. Fees: The Montpelier City Council shall determine such fees as may be necessary for the filing of notices and the processing of hearings and action thereon.

D. Planning Commission: Regular and Alternate members shall not be current members of the Planning Commission.

IV. MEETINGS

A. Regular Meetings: Regular meetings of the Development Review Board shall be held on the 1st and 3rd Mondays in each calendar month, unless no applications are pending or there is no other business to transact, in which case the meeting may be canceled. If the regular meeting falls on a holiday, the regular meeting will be held on the next working day if possible.

B. Site Visits: The Board may convene at the site if the Board feels a site visit will aid in their understanding of a proposed project. Site visits are intended to familiarize Board members and the public with the site on which a project or activity has been proposed; it is not a hearing. Members may visit a site individually or as a Board. If a quorum of the Board is present, it is an open meeting and its date and time must be announced and/or posted in accordance with state law. In order to avoid ex-parte communication (see Section VII.J.), statements, questions, concerns, or suggestions among those present should be either (1) directed to staff for research and presentation, (2) presented in writing to the commission, or (3) raised directly at the next appropriate hearing for the public record. If a member visits the site individually, he or she shall present that information at the appropriate hearing or meeting.

C. Special Meetings: Special meetings of the Board may be called by the Chairperson or by a majority of the members of the Board provided that at least 24 hours written notice of the time, place, and business of such meeting shall be given each member of the Board. Action items requiring public hearing notice shall conform to the notice requirements in V.S.A. 24 §4447 and will not be scheduled for a special meeting.

D. Order of Business: The order of business at all regular meetings of the Board shall be as follows, however, changes in the order of the agenda may occur:

- (1) Call to order and recognition of quorum.
- (2) Reading and approval of the minutes of the preceding meeting.
- (3) Consent agenda items.
- (4) Action on continued hearings and/or applications.

- (5) Public hearings (when scheduled) and new applications.
- (6) Report of actions taken in prior deliberative sessions.
- (7) Report of Administrative Approvals.
- (8) Other business.
- (9) Adjournment.

E. Recess of Meeting or Hearing: The Board may recess a meeting or hearing if all the 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 recessed meeting or hearing shall be announced before adjournment.

F. Open Meetings: All meetings of the Board and its committee shall be open to the public; however, the Board reserves the right to go into deliberative session which is not open to the public to discuss the issues only if a motion and a vote is made to recess into deliberative session. No minutes shall be taken during deliberative session. All decisions made during deliberative session shall be put in writing and signed as prescribed in II C.

V. CONFLICT OF INTEREST

All members of the Development Review Board shall abide by the City of Montpelier Ethics Policy adopted by the Montpelier City Council on April 28, 1999 together with any subsequent amendments. Any disqualified member shall not preside at the hearing or be counted by the Board in establishing the required quorum. The applicant or any interested party may petition the Board to disqualify any member because of a conflict of interest. If the Chairperson is disqualified, the Vice Chairperson shall preside. In the event the Vice-Chairperson is unable to preside, a majority of the Board shall appoint an Acting Vice-Chairperson for the proceeding.

VI. VOTING

A. Quorum: For the conduct of a meeting or hearing and the taking of any action a quorum must be present. A quorum for the Development Review Board shall consist of a maximum of seven (7) and a minimum of four (4) regular or alternate members.

B. Majority of Vote Required: Determination on any matter before the Board shall require the concurrence of four members of the seven-member Board, regardless of any vacancies or disqualifications.

C. Motions in the Affirmative: All motions made for any decision shall be made in the affirmative. This does not imply that the person making or seconding the motion support that motion. A failure to obtain four affirmative votes shall be considered a denial. An abstention equals a negative vote.

D. Quorum may Transact all Business of the Board: If a quorum of the Board is present at a meeting, that quorum may transact all matters that may or are required to come before it.

VII. CONDUCT OF HEARING OR REVIEW OF ALL APPLICATIONS

A. Order of Hearing or review of applications: Hearings and review of applications shall be conducted in accordance with the applicable rules of evidence as set forth in 3 V.S.A. §810. The order of proceedings shall be as follows:

- (1) Roll call.
- (2) Statement of the case and reading by the Zoning Administrator or designated staff of the public notice for the hearing and of correspondence and reports concerning the appeal, application, or petition.
- (3) Applicant presents his case along with the witness in favor of the appeal if applicable.
- (4) Cross-examination of applicant's witnesses by the Board.
- (5) The presentation of a case by any interested party or parties.
- (6) Cross-examination of opposition witnesses by the Board.
- (7) Rebuttals.
- (8) Recess or adjournment of hearing or discussion of application.
- (9) Deliberation - Review criteria applicable to application.
- (10) Development of Findings, Conclusions, and Conditions (See VIII).

B. Representation: Any interested party may appear in person or be represented by an agent or attorney.

C. Record of Proceedings: Proceedings at public hearings shall be recorded either electronically or by a court stenographer at the discretion of the Board. A transcript of the proceedings shall be made at the request of any party upon payment of the reasonable costs thereof.

D. Presentation of Evidence: All evidence upon which the applicant or other party wishes to rely shall be presented at the hearing and made part of the hearing record.

E. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chairperson or, in the Chairperson's absence, the Vice Chairperson.

F. Cross-examination: The Development Review Board members may cross-examine witnesses. The Chairperson, or Vice Chairperson if presiding, shall rule on the relevance and may limit the scope of cross-examination to ensure relevancy and expedite the business of the Board.

G. Rules of Evidence: Rules of evidence as applied in civil cases in the superior courts of the state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to provide facts not reasonably susceptible to proof under those rules, evidence not ordinarily admissible and not precluded by statute may be admitted if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

H. Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties may be given an opportunity to compare the copy with the original.

I. Rehearing or Reconsideration: An application for rehearing or reconsideration may be made in the same manner as provided for in the original application. The Board may reject an application for rehearing without a hearing and render a decision thereon, which shall include findings of fact

within 14 days of the date of filing of the application if (a) the Board considers the issues raised by the applicant in his or her application have been decided in an earlier appeal, and (b) there has been no substantial change in the evidence, facts, or circumstances of the case. The decision shall be rendered, or notice given, as in decisions under Section VIII of these Rules of Procedure.

J. Ex-parte Communications: Conversations regarding a particular hearing or application outside of the regular meeting are considered ex-parte contact and are inappropriate. If such conversations occur, the Board member shall disclose the details of the conversation to the Board during a regular meeting.

VIII. DECISIONS MADE BY THE DEVELOPMENT REVIEW BOARD

A. Majority Vote: The decision on any application or appeal to the Development Review Board shall be made by a motion and majority vote of the Board.

B. Written Findings of Fact and Conclusion: A statement of the evidence and testimony relied upon and the Board's decision shall be drafted by a member of the Board or administrative staff appointed by the Chairperson. This statement shall be reviewed and signed by the member of the Board who presided as Chairperson or Vice Chairperson at the hearing if the statement accurately reflects the findings, conclusions, decisions and any applicable conditions as determined by the Board. Upon such signature by the presiding member, the statement, in combination with the minutes of all hearings on the application, shall constitute the form of decision rendered to the applicant and all interested parties.

C. Conditions to Approvals: The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Municipal and Regional Planning and Development Act and the municipality's plan and zoning regulations.

IX. REFERRALS AND EVALUATION REQUESTS

A. Referral to State Agencies: A conditional use permit or appeal application subject to state agency review under 24 V.S.A. §4409 shall not be made final by the Board prior to the expiration of thirty days following submission by the Board of a report to the state agency designated, describing the proposed use, the location requested, and an evaluation of the effect of such proposed use on the municipal and regional plans.

B. State Agency Report to the Board: The State Agency Report to the Board may be introduced into the hearing record as evidence.

C. Request for Other Official Evaluation: As relevant and necessary for the conduct of the hearing, the Board may request from an appropriate municipal department or official, an evaluation of the impact a proposed development application will have on traffic, the environment, or community services and finances. This information or report may be presented as testimony at the public hearing and shall become part of the public record.

Revised and adopted by the Development Review Board August 19, 2002.