



Planning Board

Belmont, New Hampshire

Rules of Administrative Procedure

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SECTION 1: AUTHORITY

These rules of procedure are adopted under the authority of RSA 676:1 and shall be known as the Planning Board Rules of Administrative Procedure or “Rules”.

Unless otherwise stated, or unless otherwise required by the context, any reference to a statute, law, regulation or ordinance in these Rules shall be deemed to include any future amendments made to such statute, law, regulation or ordinance.

SECTION 2: PURPOSES

The purposes of these Rules are:

- A. To meet the requirements of RSA 676:1;
- B. To highlight the multiple procedural requirements of the Planning Board outlined in RSA 673 and to ensure that related Board operational requirements (e.g. RSA 676) are generally highlighted and properly implemented;
- C. To ensure, for the benefit of Belmont's citizens, officials, the Planning Board and other Town Boards and Commissions, as well as development applicants, representatives, and all other interested persons or organizations, that Planning Board operations are commonly known and understood.

SECTION 3: AMENDMENTS and WAIVERS.

- A.** These rules of procedure may be amended by a majority vote of the members of the Board at a regular meeting of the Board.

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- B.** The basis for any waiver granted by the Board shall be recorded in the minutes of the Board. The Board may only grant a waiver if the Board finds, by majority vote, that:

- 1.** Strict conformity would pose an unnecessary hardship to the applicant and granting the waiver would not be contrary to the spirit and intent of the Rules.

SECTION 4: ROLE

The role of the Planning Board is to provide for the orderly growth and development of the municipality and to prepare and, from time to time, amend the Belmont Master Plan. In addition, the Board's duties include, but are not limited to:

- Preparation and amendment of the:
 - Capital Improvements Plan
 - Subdivision Regulations
 - Site Plan Review Regulations
 - Driveway Regulations
 - Earth Excavation Regulations
- Drafting for the purpose of legislative action amendments to the:
 - Zoning Ordinance
 - Innovative Land Use Controls
 - Wetlands Ordinance
 - Floodplain Ordinance
- Develop, appoint and guide the:
 - Application Review Committee
- Appoint and set forth the Duties of the Land Use Staff

SECTION 5: MEMBERS

- A. Elected Members.** Under the provisions of RSA 673:2 and RSA 673:5 members of the Planning Board shall be elected by ballot at the annual town elections and shall serve three-year terms. Members must reside in Belmont. One of the seven members shall be designated by the Selectmen as an Ex-Officio Member. The term of the Ex Officio Member shall coincide with the term for the office of Selectmen.
- B. Appointed Alternate Members.** In accordance with RSA 673:6 the Planning Board shall also include up to three alternate members who shall serve staggered three-year terms and who shall be appointed by the Board. Terms shall expire on March 31st of the applicable year. An Alternate Ex-Officio Selectmen Member may also be appointed by the Selectmen. The Ex-Officio Member of the Board may be replaced only by the Ex Officio Alternate, and the Ex Officio Alternate may replace only the Ex Officio Member. Alternate members must reside in Belmont. Alternates should attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve.
- C. Vacancies.** Vacancies for members, which occur other than at the expiration of a term shall be filled by appointment by the Planning Board until the next regular municipal election, at which time a successor shall be elected to complete the unexpired term or to start a new term, whichever is appropriate. The Chairman may temporarily designate one of the board's alternate members to fill a vacancy on the board until that vacancy is permanently filled by election. If the vacancy is for an ex officio member, however, the chair may only designate someone who is the alternate for that ex officio member.
- D. Oath.** Each new (including re-elected or re-appointed) member shall be sworn in and take an oath of office as required by RSA 42:1. The moderator, town clerk, one of the selectmen or a justice of the peace is authorized to administer the oath.
- E. Membership Record.** The Land Use Office shall forward to the Town Clerk for recording the appointment and expiration dates of the terms of each member appointed by the Board.
- F. Attendance.** In order to best serve the needs of the applicant and to fulfill the obligations of the appointed position, members are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Land Use Office as soon as possible. The minutes of the Board shall record the names of all members attending each meeting
- G. Removal of Members.** Pursuant to RSA 673:13, the Board of Selectmen, after a public hearing, and upon written findings of inefficiency, neglect of duty or malfeasance in office may remove from office an elected member; and the Planning Board after a public hearing and upon the same written findings may remove from office an appointed alternate member.

Neglect of duty may consist of, but is not limited to repeated unexcused meeting absences. If three consecutive regular meetings; or a total of four regular meetings in one calendar year are missed as unexcused by a member, the Land Use office shall notify the member in writing that

s/he is subject to removal from the Board. Upon continued unexcused absence of an elected member the chairman shall forward to the Selectmen the recommendation to hold a public hearing regarding the removal of said member from the Board. In the case of an appointed alternate member, the Planning Board may hold a public hearing regarding the removal of said alternate member from the Board.

The Selectmen, or the Planning Board, as appropriate, shall file with the Town Clerk a written statement of reasons for removal under this section.

- H. Conduct.** All members shall conduct themselves in accordance with their statutory obligations and the Town of Belmont Code of Ethics.
- I. Service on Other Boards.** Members may serve on other municipal Boards or Commissions as qualified and in compliance with RSA 673:7,I.
- J. Preparation.** Members shall make every effort to review materials provided to them in preparation of scheduled meetings and may also view subject sites prior to the meeting.
- K. Voting.** Members shall participate in the decision making process and vote on all matters for which they are part of the voting body except in those cases where the member has a conflict of interest or is disqualified. Motions, seconds and votes may be made by any member or officer of the Board appointed as part of the voting body for that action. Once seconded the motion may be discussed and questioned as the Chair allows. Tie votes shall be taken as no action.

Abstaining is a refusal to vote and thus is discouraged. It is a member's duty to help make a decision. If a member does not have enough information about the issue, or disagrees with the reasoning of the motion, the member should vote "no" or find another avenue to reach a decision. Members abstaining shall explain their reason(s) for abstaining. However abstaining does not invalidate an action by the Board when there is a quorum present. One or more members abstaining shall not effect whether or not a quorum is present.

- L. Training.** It is strongly recommended that members attend training seminars sponsored by the NH Office of Energy and Planning, the Local Government Center and other such opportunities. Expenses will be reimbursed by the Board. New members are encouraged to ask questions of the Land Use Staff and Board about matters they do not understand.

SECTION 6: OFFICERS

Officers shall be elected annually, in April, by a majority vote of those present and voting. Once elected Officers shall serve until her/his successor shall take office. Written ballots shall be used at the request of a voting member of the board.

- A. Chair.** The chair shall preside over all meetings and hearings, shall affix his/her signature in the name of the Board and perform other duties customary to the office. The Chair or by her/his designation, the Town Planner shall serve as the Board's liaison with outside entities such as other boards, the press, consultants and legal counsel.
- B. Vice-chair.** The vice-chair shall preside in the absence of the chair and shall have the full powers of the chair on matters that come before the Board during the absence of the chair.
- C. Temporary Chair.** In the event that both the Chair and Vice-chair are absent or otherwise unable to serve on an application the most senior member in attendance shall assume the duties of Chair for that application/meeting and shall have the full powers of the chair on matters that come before the Board during the absence of the chair and vice-chair.
- D. Term.** All officers shall serve for one year and shall be eligible for re-election.

SECTION 7: RECORDS

The records of the Board shall be kept by the Land Use Staff and made available for public inspection at the Belmont Town Hall, in accordance with RSA 673:17 and 91-A.

- A Minutes.** Pursuant to RSA 91-A:2.II, minutes shall be taken of all meetings. Minutes shall include names of Board members and show the vote of each member upon every question, or if absent, disqualified, or failing to vote so indicate. Minutes shall include names of persons appearing before the Board and a brief description of the subject matter. Minutes shall be open to public inspection within 5 business days of the meeting. Minutes are considered to be in Draft form and shall be so stamped until accepted by the Board at a subsequent meeting. Minutes so accepted are considered the official record of the meeting. Only members present at a meeting can vote on a motion to accept the minutes of that meeting.
- B. Decisions.** Pursuant to RSA 676:3, final written decisions will be placed on file and available for public inspection within 5 business days of such decision. Upon close of the final appeal period related to an action by the Board to approve or deny an application, a Notice of Decision shall be signed by the Chair and recorded in the Belknap County Registry of Deeds.

SECTION 8: MEETINGS

- A. Schedule.** The Board shall hold at least one regular meeting per month at the Corner Meeting House on a schedule determined by the Board. Schedules shall be posted annually, and adjustments may be made in the schedule as necessary. Other meetings may be held at the call of the chair.

A “meeting” occurs whenever a quorum of board members convenes in person, by phone, e-mail or by any other electronic means to discuss or act upon a matter over which the board has supervision, control, jurisdiction, or advisory power (RSA 91-A:2). A discussion alone is enough to make a meeting; the board does not have to make a decision in order to be involved in a public meeting.

Meetings may not be held via e-mail, online chat, or any method in which the public cannot hear, read or discern the discussion as it happens. In other words, all members must be able to hear and speak with each other, and the public must be able to hear or perceive both sides of the conversation as it occurs. Members may be allowed to participate in meetings by telephone or video conference when physical attendance is not reasonably practical, so long as a quorum is still physically present at the advertised meeting location.

Public notice for meetings shall be in accordance with RSA 91-A:2,II the applicable Ordinance or Regulation. Additionally, notice shall be made to each member at least 24 hours in advance excluding Sundays and legal holidays. The chair may cancel or postpone a meeting as a result of weather, lack of applications, or other good reason. However, any meeting cancelled or postponed by less than a quorum of the Board requires renoticing.

- B. Quorum.** A quorum for all meetings of the Board shall be four members or alternate members.
- C. Alternate Members.** If any regular Board member is absent from any meeting or hearing, or disqualifies himself/herself from sitting on a particular issue, the chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting. If the Ex Officio Member is absent or disqualifies him or herself, only the Ex Officio Alternate, if present, can serve in place of that member.

At meetings where an alternate member is not required to sit in place of an elected member, said alternate shall join the Board at the table and participate in the public hearing portion, but may not participate in the deliberative or voting portion of the meeting.

- D. Continuations.** The Chair shall attempt, when possible, to see that the same combination of members who initially serve on an application sit on any continued consideration of the application. However, when that is not possible, other members may be appointed as necessary when they have sufficient knowledge of the application based on prior attendance and/or a review of the prior record.

- E. Recess.** The chair may order a temporary halt to the proceedings of the meeting. Said recess should normally not exceed 30 minutes. Upon ordering the recess, the Chair shall state the time and place for reconvening.
- F. Disqualification.** Members shall not participate in deciding or sit upon the hearing of any question where such member:
1. is not indifferent to the outcome of the application; or
 2. has a direct personal or pecuniary interest in the outcome of such decision or hearing different from the interest of other citizens; or
 3. could not meet the “juror” standard (RSA 673:14,I); or
 4. is an abutter to a property under review

If any member finds it appropriate to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, he/she shall notify the chair as soon as possible so that an alternate may be requested to sit in his/her place. The disqualification shall be announced by either the chair or the member disqualifying himself/herself before the beginning of the public hearing on the case where possible, otherwise as soon as such disqualification is known. The disqualified member shall absent himself/herself from the Board table during the public hearing and during all deliberation on the case.

When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the board may request the board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway where possible, otherwise as soon as such disqualification is known. The vote shall be advisory and non-binding.

Applicants who believe a conflict exists for any member or alternate member shall also disclose such belief before the beginning of the public hearing where possible, otherwise as soon as such disqualification is known.

In relation to RSA 673:14 and RSA 91-A:2-a, members must exercise discretion in regards to “ex-parte” communication. Specifically, members should avoid conferring with project applicants or their representatives, and with proponents, opponents, other members or any other party with an interest in any application outside of prescribed regular or special meeting times. Any such contact or discussion, such as that which may occur during a site visit, shall be disclosed by the member during the Board meeting immediately following at which such application is to be discussed.

Communication between members on matters over which the Board has control shall also occur only in meetings held pursuant to RSA 91-A:2, II or III.

Members may discuss applications and other matters with Land Use and other Town Department Staff and staff consultants pursuant to project review duties outside of noticed meetings and hearings.

- G. Meeting Process.** The Board's meeting process is not subject to Roberts Rules of Order. Normally no new public hearing or business shall commence after 10pm but will be continued until the next scheduled Board meeting. The Board may, at its sole discretion, waive this provision by majority vote.

Video and/or audio recordings of Board meetings may occur as long as they do not disrupt or interfere with the normal proceedings.

- H. Order of Business.** The order of business for regular meetings shall, whenever possible, be as follows:

1. Welcome by chair, appointment of voting body as necessary, explanation of meeting process.
2. First public hearing, Board deliberation and action;
3. Subsequent public hearings, Board deliberation and action;
4. Minutes of previous meeting(s) to be adopted;
5. Land use staff report
6. New business
7. Adjournment

The Board reserves the right to modify the order or content of the agenda as appropriate and legal.

- I. Nonpublic sessions** shall be held only in accordance with RSA 91-A:3.

J. Joint Meetings and Hearings

The Planning Board may not grant final approval to a project that violates the zoning ordinance, but may grant conditional approval for such a project. However, as a practical matter, the applicant is encouraged obtain the necessary approval from the ZBA prior to seeking Planning Board approval. Particularly in cases involving the need for a variance, the legal hurdle that the applicant must overcome is rather high. Additionally, the detail of plan required by the Planning Board for an application including site development is more complex and costly than may be required by the Zoning Board. Whether a use will be permitted at all is a threshold issue to other planning decisions. It is often more economical for a developer to seek ZBA approval first and proceed with the engineering for the planning board if, and only if, the threshold issue with the ZBA is resolved satisfactorily. Additionally;

1. Pursuant to RSA 676:2, the Planning Board may hold joint meetings or hearings with other town "land use boards", including the Zoning Board, Building Official, and Heritage Commission, at the request of an applicant or upon the initiative of one or more of the land use boards. Each board shall have discretion as to whether or not to hold a joint meeting with any other land use board.
2. The Board may hold joint business meetings with any other land use board at any time when called jointly by the chair of the boards involved. Other non-application related

meetings may be held with other Town Officials and Boards and require all applicable noticing.

- 3.** A public hearing on any appeal to the Board will be held jointly with another board only under the following conditions:
 - a.** The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - b.** RSA 676:2 requires that the Planning Board chair shall chair the joint hearing; and
 - c.** The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and
 - d.** Notice of a joint hearing shall be consistent with the rules of each land use board. The boards may require only one combined notice for abutters; and
 - e.** The filing of decisions shall be done separately by each board according to its procedures and responsibilities; and
 - f.** The other board shall concur in these conditions.

SECTION 9: CONTACTS WITH TOWN COUNSEL

All contacts with Town Counsel must be approved by the Chairman of the Board and must be within the budget appropriation of the Board. Contacts outside the budget appropriation must also be approved by the Board of Selectmen or their designee. Land use staff may be authorized as a liaison with Town Counsel.

SECTION 10: SITE VIEWS and PUBLIC HEARINGS**A. Site Views**

By their signature on the application, applicants authorize the Board and/or their staff to view the site for the purpose of evaluating the proposal. Members may view the site individually or together, however public notice must be given in accordance with RSA 676:7 for any view at which a quorum of the Board will be present. Site views with a quorum of the Board are considered public meetings and the applicant and the public have a right to attend. Refusal by the applicant to allow entry of the Board and/or its staff or the entry of the public when the site view is a public meeting is grounds for the Board to deny the application without prejudice.

B. Public Hearing

The conduct of a public hearing shall be governed by RSA 676:4, Town Regulations and the following rules:

1. The chair shall call the meeting in session, appoint alternate members for the entire evening as necessary and explain the meeting procedures.
2. The chair shall read the notice of each hearing, inquire if any member or alternate requests to be disqualified, or if the applicant believes any conflict exists and make replacement alternate appointments for this hearing as necessary.
3. The Board shall vote to determine if the development being the subject of the appeal has potential regional impact. If so the Board must follow the statutory notice procedures set forth in RSA 36:57. Additionally, at any point during the public hearing the Board may act to change that determination if additional pertinent facts become known.
4. The Board shall vote to determine whether or not the application is complete with sufficient information to allow the Board to proceed with consideration and to make an informed decision.
5. The public hearing will be held. The applicant or his/her representative (authorized in writing) must attend the public hearing to present the application. If no one is present at the meeting to present the application, at the Board's discretion it may be tabled until the following meeting or may be denied without prejudice requiring the Applicant to reapply.
6. The initial presentation is followed by questions by the Board, although members may ask questions at any point during the hearing.
7. The Chairman will next open the hearing to other comment and questions.
8. All comments and questions will be addressed to the chair. Each person who speaks shall be required to state his/her name and address and indicate whether he/she is a party to the case, an agent or counsel of a party to the case, an abutter, a non-abutter with evidence that the proposal will have impact on his/her property, or interested citizen.

9. The Chair shall recognize those in favor and opposed to the application as well as for an opportunity to rebut.
10. To allow for the orderly function of the Board, the Chair may move that a time limit be set on individual speakers or when all debate shall end. Any motion to limit debate shall require a majority vote of the Board. The Board shall use the goal of ensuring that all who wish to be heard on an application are able to speak before the Board as their guide in determining whether to limit any debate.
11. Other parties such as representatives of town departments and other town boards and commissions who have an interest in the proposal shall be allowed to present their comments in person or in writing anytime during the Board's consideration of an application.
12. Absent members may provide written comments for Board consideration during the public hearing portion of the meeting. Such comments shall be forwarded to the Land Use Staff for transmittal to the Board.
13. The Board may also receive advice from their Counsel. Unless such advice is disclosed, wholly or in part, during the public hearing, it is considered privileged and not subject to disclosure under RSA 91-A unless so voted by the Board.
14. Written evidence related to any matter to come before the Board may also be submitted to the Land Use Office prior to the meeting by an abutter, a non-abutter with evidence that the proposal will have impact on his/her property, or interested citizen. Such evidence shall be submitted no later than the close of business hours on the meeting date and will be considered by the Board during the public hearing process.
15. The Board shall hear with interest any evidence that pertains to the facts of the case or how the facts relate to the provisions of the applicable Regulation or Ordinance.
16. All additional physical evidence submitted by any party during the public hearing in the form of plans, drawings, pictures, correspondence, etc. shall be kept by the Board as part of the permanent record of the application.
17. Public hearings may be tabled for additional information. Public hearings tabled to time certain do not require additional noticing.
18. As authorized by RSA 673:16, the Board may contract with outside review services or technical assistance at the cost of the applicant.
19. The Chair may close a public hearing when there is no further testimony from the public, when the public is out of order, or when testimony has become unduly repetitive.

SECTION 11: DECISIONS

The Board may begin deliberation on the merits of the application at the close of the public hearing and act to approve, approve with conditions, deny the application, or defer its decision.

Members may draw upon their own knowledge of certain factors in making ultimate decisions on proposals that come before them. Such factors may include, but not be limited to traffic conditions, surrounding uses, and their opinion of the probable impact of the proposed development on the surrounding neighborhood. However, Board members may not rely on factually unsupported conclusions in the face of uncontradicted contrary expert testimony.

Decisions are usually rendered by the Board at the same meeting at which the public hearing is completed. In some instances, decisions may be made at a later date. Decisions will be announced by the Chair at the time they are made.

Notice of the decision or deferral will be made available for public inspection within 5 business days of the vote, as required by RSA 676:3, and will be sent to the applicant and other parties deemed by the Board to have special interest. If the application is granted the notice shall include all conditions of approval; if denied or deferred, the notice shall include the reasons therefore.

Decisions of the Board continue in effect even when the land changes ownership. Approvals are subject to expiration and can be abandoned. The Board is entitled to attach conditions to its approval and any failure to comply with the same may constitute a violation.

Decisions of the Board may be appealed under, as applicable, to the Zoning Board of Adjustment under RSA 676:5,III or to the Superior Court under RSA 677:15 or as otherwise allowed by law.