



TOWN OF MILFORD, NH
OFFICE OF COMMUNITY DEVELOPMENT

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Date: October 25, 2021
To: Planning Board
From: Jason Cleghorn, Town Planner
Subject: Amendment to *Planning Board Rules and Procedures*

Earlier this year, the Planning Board discussed at its June 1st meeting the rules and procedures regarding Site Walks. Board Members Basiliere and Langdell brought forth revisions that they had suggested regarding revisions to this portion of the Rules and Procedures.

Staff has codified those changes into revised changes to the *Planning Board Rules and Procedures*. Discussion around omitting section L and M of their proposed revisions was held and was the consensus of the Board. Those provisions related to insurance implications of which Town Staff researched and provided clarification to the Planning Board at that time. According to the New Hampshire Municipal Association, liability primarily relates to the doctrine of prior knowledge. For situations in which the town had no prior knowledge of a potential hazard, it would have no (little) legal liability.

These draft revisions encapsulate their proposed changes which were discussed by the Planning Board, eliminating those portions related to the insurance ramifications.

A revision to *Planning Board Rules and Procedures Section XII: Standards of Conduct* has been proposed in letter H. which would create a policy on how complaints received by Planning Board Members that are unrelated to pending applications should be handled.

TOWN OF MILFORD
NEW HAMPSHIRE



PLANNING BOARD RULES AND
PROCEDURES

Adopted: July 24, 2018

**Rules and Procedures
Town of Milford, New Hampshire
PLANNING BOARD**

Rules of Procedure:

I. Authority:

- A. These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA) 676:1.

II. Title, Adoption, and Amendment:

- A. These Rules may be cited as the Milford Planning Board (the Board) Rules of Procedure.
- B. These Rules shall be adopted following a public hearing by the Planning Board. The hearing shall be noticed by a legal notice published not less than ten (10) days prior to the hearing in a newspaper of general circulation and said notice shall contain a summary of the provisions herein, together with the notation that the full text is available upon request.
- C. These Rules shall be effective upon adoption by a majority of the Board and when they have been voted on by a majority of the Board and filed with the office of the Town Clerk.
- D. These rules may be amended and revised in the same manner as the initial adoption.

III. Membership, Terms of Office, Officers, Vacancies, Alternates, Disqualifications:

- A. The Milford Planning Board shall consist of seven (7) members, one of which shall be a designated member from the Board of Selectmen to serve as an ex officio member with the power to vote.
- B. Except for the Selectmen's representative and when required to fill vacancies, members shall be appointed in staggered three (3) year terms. The membership of the Board shall be appointed in such a manner so that no more than three (3) members shall be appointed (or re-appointed) each year.
- C. The Term of Office shall commence upon appointment by the Board of Selectmen and after the Board member has been sworn in, provided however, that term shall continue until a successor have been appointed.
- D. Annually, the Planning Board shall elect a Chairman and Vice-Chairman from its regular members. The Selectmen's representative shall not hold either office. The Chairman and Vice-Chairman shall be eligible for reelection.

- E. Officers shall be elected for a one (1) year term at the first regular meeting following the annual Town Meeting in March.
- F. The Board of Selectmen shall appoint not more than five (5) alternate members, as authorized by RSA 673:6. The terms of alternate members shall be staggered three (3) year terms. The alternate for the Selectmen's representative shall be a selectmen, with a term to be determined by the Board of Selectmen.
- G. Each newly appointed (including re-appointed) member shall be sworn in and take an oath of office as required by RSA 42:1.
- H. The Chairman of the Planning Board shall forward to the Town Clerk for recording the appointment and expiration dates of the term of each member of the Board.
- I. Pursuant to RSA 673:12, vacancies in the membership of the Planning Board occurring other than through the expiration of a term of office shall be filled by the next senior alternate (longest serving), to be appointed by the Board of Selectmen, for the remainder of the unexpired term.
- J. Designation of Alternates:
 - 1. If one or more regular members is/are absent from a meeting or disqualifies her/himself, the Chair shall designate alternate members, if present, to sit in their places, in accordance with RSA 673:11.
 - 2. In order to ensure that each alternate gets as much experience as possible, the Chair shall designate available alternates in an equitable fashion.
 - 3. Only a Board of Selectmen alternate representative shall sit in place of the ex-officio Board of Selectman member and shall have all the powers and duties of a regular member.
 - 4. An alternate designated to sit on the Board as a voting member for any reason shall have all the powers and duties of the regular member in regards to any matter under consideration on which the regular member is unable to act.
- K. Role of Alternate Members:
 - 1. To ensure that alternates are prepared to sit on the Board as a voting member as the need arises, they will prepare for and attend all meetings possible and may contribute to any deliberation. They will sit at the Planning Board table to hear all discussions.
 - 2. Alternate members may serve on the Planning Board as authorized by RSA 673:6. Alternate members shall participate in all meetings and deliberations of the board, excluding voting (unless appointed to vote in the place of a regular member as appointed at the meeting by the Chair). At all times, the chair shall fully inform the public of the status of an alternate present and identify the members who shall be voting on an application.

- L. If any regular member finds it necessary to be disqualified from sitting on a particular matter, he/she shall notify the Chairman as soon as possible so that an alternate can be designated to sit in his/her place. The disqualification shall be announced by the Chairman before the discussion or the public hearing begins. The member disqualified shall leave the Board table during all deliberations and public hearings on the matter.
- M. If uncertainty arises as to whether a Board member should disqualify him/herself, at the request of either that member or another member of the Board, the Board shall vote on the question of whether that member should be disqualified. Such a request and vote shall be made prior to or at the commencement of any required public hearing. A vote on a question of disqualification shall be advisory and non-binding, and may not be requested by persons other than board members.

IV. Duties of the Officers:

- A. **Duties of the Chairman:** The Chairman shall preside over all meetings and hearings; shall prepare, with the assistance of the Vice-Chairman, an annual report for the Town Report; and shall perform other duties customary to the office.
- B. **Duties of the Vice-Chairman:** The Vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters that come before the Board in the absence of the Chairman.
- C. **Chair Pro-Tempore:** In the absence of the Chair and Vice-Chair, the members present at any such meeting shall elect a Chair Pro-Tempore to preside over the meeting. The Chair Pro-Tempore shall have the full powers of the Chair for the purposes of the meeting.

V. Meetings and Voting:

- A. The Board shall regularly hold meetings on the first and third Tuesdays of each month, except that the Board may vote to hold only one meeting in a month or vote to set other dates.
- B. Special meetings of the Board shall be held at the call of the Chairman, or in his/her absence, by the Vice-Chairman, or at the request of three 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. The notice shall specify the purpose of the meeting.
- C. All regular or special meetings of the Board shall normally be held in the Milford Town Hall. Any change of venue shall be posted in a public notice at least 48 hours in advance of the time of such meeting, unless circumstances dictate otherwise.
- D. Meetings of the Board shall normally commence at 6:30 PM, unless otherwise decided by a majority vote of the Board. The Board shall not begin deliberation on any items of new business later than 10:00 p.m. unless voted otherwise. The Board may continue to conclusion the public hearing of any item of new business begun prior to 10:00 p.m.

- E. Regular or special meetings of the Board may be recessed to a time and place as a continuation of said meeting without further notice.
- F. Non-public sessions shall be held only in accordance with RSA 91-A:3.
- G. A majority of the membership of the Board shall constitute a quorum, including alternates sitting in place of regular members.
- H. An affirmative vote of a majority of the members voting on a question shall be sufficient for adoption of the question. Members of the Board present may be counted to determine whether a quorum is present although they may abstain from voting affirmatively or negatively.
- I. All members are expected to vote on matters before the Board, including the Chairman, unless that member has recused him/herself. Abstaining from a vote is discouraged, unless the issue pertains to business which took place when the member was absent.
- J. When the vote on a question is evenly divided, the question shall be deemed to have been defeated.
- K. A motion to reconsider a previous vote of the Board shall be in order only if made by a member who voted with the prevailing side.

VI. Minutes and Records of the Board:

- A. Minutes of the Board meetings shall be kept in accordance with the provisions of RSA 91-A. Minutes shall be considered a summary of events and business transacted once approved by the Board with any corrections noted.
- B. Minutes of all meetings, including the names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within 144 hours of the public meeting, as required in RSA 91-A:2,II.
- C. Minutes shall be considered draft minutes until such time as the Board formally approves the minutes.
- D. The records of the Board shall be kept by the Department of Planning and Community Development, Town Hall, and shall be made available for public inspection during normal business hours.

VII. Conduct of Meetings

- A. Unless modified by a vote, the Board regularly conducts the following Order of Business:
 - 1. Chairman opens the meeting

2. Introduction and roll call of members; introduction of Town staff as applicable
3. Alternate members are seated, if needed, in order to establish at least a quorum
4. Approval of minutes of prior meetings
5. Correspondence to the Board not applicable to any application before the Board
6. Consideration of New Applications:
 - a. The Chairman shall conduct the hearing process for new applications in the following manner (when appropriate):
 1. Chairman reads application.
 2. Motion requested and made regarding determination of potential regional impact (RSA 36:54).
 3. Chairman asks for abutters names to be read with those present noted for the record.
 4. Planning Board determines if application is complete, and if so, a motion is requested to accept the application. If the Board determines that the application does not have sufficient information to proceed with consideration, a motion is requested to reject the application. The agent of the board will provide the applicant with the written reason for the rejection.
 5. If an application is accepted, the Chairman opens the public hearing, and the following parties are allowed to speak after being recognized by the Chairman:
 - a. Applicant or applicant's representative presents proposal.
 - b. Questions from the Board.
 - c. Questions from any abutters (abutter's name and address to be provided for the record).
 - d. Questions from the audience other than abutters (speaker's name and address to be provided for the record).
 - e. Applicant or applicant's representative responds to the above.
 6. Chairman closes the public hearing after determining that sufficient public input has been received. Any further public input at the current meeting or subsequent meetings will require that the public hearing be formally reopened.
 7. Chairman conducts Board discussion on the application. During this discussion period, no further public input will be allowed except as solicited

by questions from the Board or as points of order. The Chairman shall allow input from Town staff.

8. Board takes action on the application and makes a motion to either:
 - a. Approve the application.
 - b. Approve the application with conditions to be met specific to the development.
 - c. Motion to disapprove, with reasons
 - d. Motion to table, with reasons. If an application is tabled, additional notice is not required if the date, time and place of the continuation is made known at the time of tabling.

7. Consideration of Old Business.
 8. Consideration of Other Business.
 9. Adjournment.
- B. Correspondence specific to an application before the Board will not be read with the general correspondence, but rather during the public hearing on that application.
 - C. Any documents presented during a hearing shall be submitted to the Board for inclusion in the official file and in the meeting minutes if applicable.
 - D. The agenda order will be set by the Chairman in conjunction with consultation from the Planning Department staff, based upon Staff recommendation on the completeness of the application.
 - E. The Chairman shall enforce such order and decorum as may be necessary for the sufficient conduct of the Board's business, guided by a desire to maximize public input on matters before the Board. The Chairman shall regulate discussion among Board members, but generally refrain from participating in the debate until after other members of the Board have spoken. However, the Chair should vote on issues before the Board, subject to Section V. above.
 - F. Board members and members of the public shall address all comments and questions through the Chairman.
 - G. The Chairman shall have the discretion to set reasonable time limits for presentation of, public input on or discussion about an application; and the discretion to cut off the discussion at any point during the hearing. Should any member wish the discussion to continue, the Chairman shall call for a vote of the Board and the majority opinion will carry.

VIII. Decisions:

- A. The Board shall render a written decision within 65 days of the date of acceptance of a completed application, subject to extension or waiver as provided in RSA 676:4 (c)(1).
- B. Notice of decision will be made available for public inspection at the Planning Office, Town Hall, within 144 hours after the decision is made, as required in RSA 676:3. If an application is disapproved, the Board shall provide the applicant with written reason(s) for the disapproval.

IX. Joint Meetings and Public Hearings:

- A. The Planning Board may hold joint meetings and public hearings with other land use boards, including the Zoning Board of Adjustment, the Heritage Commission, and the Conservation Commission. Each board shall have discretion whether or not to hold such joint meetings or hearings.
- B. Joint meetings with other land use boards may be held at any time when called jointly by the chairmen of the two boards.
- C. A joint public hearing must be a formal public hearing when the subject matter of the hearing is within the responsibilities of the boards convened.
- D. The Planning Board chairman shall chair all joint meetings and public hearings when the subject matter involves the Planning Board.
- E. The rules of procedure for joint meetings and hearings, the subject matter which involves the Planning Board, shall be the same as these rules of procedure except that the order of business shall be as follows:
 - 1. Call to order by the Planning Board chairman.
 - 2. Introduction of members of both boards by the chairman.
 - 3. Explanation of the reason(s) for the joint meetings/hearing by the chairman.
 - 4. In the case of a public hearing relative to a requested permit or an application for a plan approval, or both, the applicant shall be called to present his proposal.
 - 5. The Chairman may then conduct the public hearing as normally conducted as for New Applications, Section VII.A.6.a.5,6 and 7, if appropriate.
 - 6. Adjournment.
- F. Each board involved in a joint public hearing shall make its own decision, based on its criteria for the particular matter.

X. Public Hearings and Work Sessions:

- A. The Planning Board shall follow the statutory provisions for holding all public hearings and work sessions on zoning amendments, changes in subdivision and site plan

- regulations, master plan modifications, capital improvements plan, and other similar responsibilities.
- B. In voting on proposed regulation changes, zoning amendments, master plan modifications, or capital improvements plans, the Board shall consider each separate item and vote on adoption or disapproval of each proposal at the conclusion of the presentations of that item.
 - C. In voting on citizen zoning amendment proposals, the Board shall vote to approve or to disapprove said proposal. If the Board should be evenly divided or if a motion to approve fails to receive a majority vote, the proposal shall be noted as being “disapproved”.
 - D. In voting on regulation changes or staff proposed zoning amendments, the proposal shall be adopted or submitted to the voters for adoption only if approved by a majority vote.
 - E. Worksession meetings of the Board shall be meetings of the Board to work on and study one or more selected topics.

XI. Site Walks:

- ~~A. A site walk is defined as a visit by the Board or a member of the Board to a location which is the subject of an application before the Board, where the visit is in the company of the owner or applicant, their agents or employees and involves going onto the property or visiting areas which are not customarily available for public inspection. This does not include a view of a site from adjoining public highways or other observations that can be made without entering on the property.~~
- ~~B. When the Board deems it necessary for the adequate consideration of an application, the Board shall request the applicant to allow a site walk by the Board.~~
- ~~C. When the Planning Board schedules a site walk for Board members, it shall be posted as a meeting of the Board in accordance with RSA 91-A.~~
- ~~D. Site walks are public meetings of the Board and the public is allowed to attend. The Chairman has the authority to maintain decorum and order on a site walk just as any other meeting of the Board.~~
- ~~E. The practice of an applicant directly contacting a member to visit a property without prior Planning Department notice shall be discouraged as an inappropriate course of conduct.~~
- ~~F. When the Board meets to consider an application, the Board and/or individual members of the Board shall disclose whether they have conducted a site walk on the location under consideration.~~

~~G. The Board shall refrain from making decisions on an application while on a site walk. Any comments, motions or direction to an application should be made at the public hearing.~~

A. A site walk is defined as a visit by the majority of the Board, thus constituting a quorum, to a location which is the subject of an application before the Board, where the visit is in the company of the owner or applicant, their agents or employees and involves going onto the property or visiting areas which are not customarily available for public inspection.

B. When the Board deems it necessary for the adequate consideration of an application, the Board shall request the applicant to allow a site walk by the Board. At their discretion, the Board may invite other land use boards to participate in the site walk.

C. The purpose of a site walk is to gather additional information to inform the Board's decision-making process. A site walk is an extension of the public hearing process but is only considered a public meeting.

D. When the Planning Board schedules a site walk for Board members, it shall be posted as a meeting of the Board, with meeting minutes recorded in accordance with RSA 91-A.

E. The Board shall refrain from making decisions on an application while on a site walk. Any comments, motions, or direction to an application should be made at the public hearing.

F. Site walks are public meetings of the Board and the public is allowed to attend. The Chairman as the authority to maintain decorum and order on a site walk just as any other meeting of the Board.

G. The practice of an applicant directly arranging for a member to visit a property without prior notice to the Board or Planning Department shall be discouraged as an inappropriate course of conduct.

H. On occasion, for example, when site walk scheduling conflicts arise, individual board members may visit a site with the owner/applicant's permission and accompaniment. The Right-to-Know law does not apply provided a quorum of the Board does not participate in the visit.

I. Viewing a site from adjoining public highways or observations without entering the property does not constitute either a site walk or a site visit.

J. If the owner or applicant refuses to grant permission for a site walk, the Board could deny an application for failure of the applicant to provide the Board with sufficient information. In

addition, if the applicant refuses access to the non-board public during a site walk, that also may be a basis for denial (without prejudice).

K. When the Board meets to consider an application, the Board members shall disclose for the record whether they participated in a site walk or conducted an individual visit to the location under consideration.

XII. Standards of Conduct:

- A. The primary obligation of Planning Board members is to serve the public interest, and to conduct themselves so as to maintain public confidence in the Planning Board and the conduct of its business.
- B. Members shall not directly or indirectly solicit any gifts or accept or receive any gift (whether in money, services, loans, travel, entertainment, hospitality, premises or in some other form), under circumstances in which it could be reasonably inferred that the gift was intended to influence them in the performance of their duties or was intended as a reward for any recommendation or decision on their part.
- C. To avoid conflict of interest or even the appearance of impropriety, any member who may receive some private benefit from a public planning board decision must not participate in that decision. The private benefit may be direct or indirect, create a material personal gain or provide an advantage to relations, friends, groups or associations that hold a significant share of the official's loyalty. An official with a conflict of interest must make that interest public, abstain from voting on the matter, and except as specified below, leave the table and podium area when the Board members deliberate and vote on a matter. Further, the Board member may not discuss the matter privately with any other Board member voting on the matter or otherwise communicate directly or indirectly with Board members regarding the matter in question so as to attempt to influence the vote on said question.
- D. In circumstances where the number of Board members who may not participate as a result of the provision in XII.C results in less than a quorum being able to participate in a given question, the abstaining members may be counted as "present" although they are not allowed to participate in anyway other than abstaining. A Board member who is participating only for the purpose of being counted for the presence of a quorum shall be entitled to sit at the table provided that he/she not participate, comment, or make any indication of his/her position.
- E. A Board member must not disclose or improperly use confidential information obtained in the course of his/her duties for financial gains or to further a personal interest.
- F. Notwithstanding the above restrictions, a Board member who has an interest in a plan before the Board may, after recusing himself/herself from the Board, exercise his/her rights as a citizen and address the Board on the issue under review.

G. Ex parte communications (written, verbal, electronic communications from or to a Board member concerning a pending application) impair the procedural due process rights of interested parties and undermine public confidence in the Planning Board. Board members shall refrain from initiating ex parte communications on any application. Any requests or inquiries by Board members should be made during public hearings or through appropriate town staff. Members receiving ex parte communications should refrain from responding (citing this section) and refer the party initiating the communication to the appropriate Town Staff. In appropriate circumstances, the Town Staff shall advise interested parties of the inquiry or attempted ex parte communication.

G.H. Complaints received from residents of the Town of Milford by individual Planning Board members that are unrelated to pending applications should be forwarded to the appropriate Town Staff and should be treated similarly to ex parte communications related to pending applications outlined in Section G above. Town Staff may provide the Planning Board at its next regularly scheduled meeting, a report concerning any actions taken toward the complaint depending upon its circumstances. The Planning Board Chairperson may at his/her discretion add an agenda item under Other Business to discuss the complaint.

H.I. All Board members share a responsibility to enforce adherence to the standards or conduct herein. If a member believes that one or more members may either by intention or inadvertence is in violation of these standards, he/she shall call that fact to the attention of the Chairman who shall in turn call it to the attention of the member in question. In the event of a dispute as to whether a member should or should not participate, the question shall be posed to the Board, as to whether the member in question should or should not participate. Such a vote shall be advisory and non-binding and cannot be requested by other than Board members.

H.J. All Board members are subject to the Town wide email policy.