

BROOKFIELD BOARD OF ADJUSTMENT RULES OF PROCEDURE AND ETHICS

Adopted March 1, 2006

Section I: Authority.

The Board of Adjustment of the Town of Brookfield hereby adopts the following rules of procedure (hereinafter referred to as these Rules) in accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h).

Section II: Policy.

These Rules are adopted to ensure consistent and fair treatment of applicants and interested persons, and participants, orderly and efficient public proceedings, and compliance with state and federal law. These Rules shall also ensure that no Board member will gain a personal or financial advantage from his or her work for the Board, so that the public trust in municipal government will be preserved.

Section III: Definitions.

- A. "Board" means the Town of Brookfield Board of Adjustment.
- B. "Board member" means a regular or alternate member of the Board.
- C. "Conflict of interest" means any one of the following:
 - 1. A direct or indirect personal interest of a Board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Board.
 - 2. A direct or indirect financial interest of a Board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Board.
 - 3. A situation where a Board member has publicly displayed a prejudgment of the merits of a particular proceeding before the Board. This shall not apply to a member's particular political views or general opinion on a given issue.
 - 4. A situation where a Board member has not disclosed ex parte communications with a party in a proceeding before the Board, pursuant to Section VI.D of these Rules.

- D. “Deliberative session” means a private session of the Board to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed.
- E. “Executive session” means a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.
- F. “Ex parte communication” means direct or indirect communication between a member of the Board and any party, party’s representative, party’s counsel or any person interested in the outcome of any proceeding before the panel, that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- G. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any Board member.
- H. “Public deliberations” means the weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
- I. “Recuse” means to remove oneself from a particular Board proceeding because of a real or perceived conflict of interest.

Section IV: Regular Officers.

The Board shall consist of five regular members, unless the Selectboard provides otherwise. As needed, the Board shall hold an organizational meeting and elect by majority vote, a Chair. The Board may, at its discretion, elect other officers by majority vote, including a Secretary.

- A. The Chair shall preside at all meetings, hearings, and deliberations, decide all points of order or procedure, and appoint members to any committee of the Board. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration.
- B. In the absence of the Chair from a meeting or hearing, or recusal of the Chair, the Board may elect an Acting Chair by majority vote. For the duration of the Chair’s absence from the meeting or hearing, or with respect to the matter on which the Chair is recused , the Acting Chair shall exercise the prerogatives of the Chair.

- C. It shall be the duty of all members to review the minutes and other official records of Board meetings and actions, and correct and ratify these when appropriate and necessary.
- D. If a Secretary has been appointed, the Secretary shall take minutes of all meetings, unless delegated to another Board member or the administrative assistant of the Town of Brookfield. Alternatively, the Board may decide to rotate the taking of minutes among some or all of the members.

Section V: Regular and Special Meetings.

Meetings to conduct business of the Board shall be held. at the town office as warranted. The Chair may cancel meetings at any time.

- A. Special meetings may be called by the Chair, provided at least 24 hours notice is given to each member and the time and place of each special meeting is publicly announced at least 24 hours before the meeting.
- B. A quorum shall consist of a majority of the entire Board.
- C. Members may participate by telephone as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the Board member.
- D. All meetings shall be open to the public unless the Board, by majority vote, has entered a deliberative or executive session, as permitted by Vermont law.
- E. The Chair shall determine the content of the agenda for each meeting, the order of business, and the time allotted for each agenda item. The Board may overrule any such determination by majority vote.
- F. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
- G. Members of the public who attend a meeting shall be afforded an opportunity to comment on each agenda item. The Chair at a given meeting may place limits on the amount of time and number of times that members of the public may speak, unless the Board acting by majority vote determines to proceed differently. Any such limits shall be applied consistently for all who speak at the meeting.
- H. Decisions at Board meetings shall be made as follows:
 - 1. Motions shall be made in the affirmative.
 - 2. The chair has the same voting rights as all members and can make motions.

3. No second shall be required for a motion to have the floor.
4. All members present are expected to vote unless they have recused themselves.
5. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
6. For a motion to pass, it must receive the concurrence of a majority of the entire Board, regardless of how many are present.

Section VI: Procedures on Applications for Approval by the Board

This section applies to any proceeding in which a Board approval pertaining to an appeal of a permit determination by the Administrative Officer, a request for a variance, or a request for Conditional Use authorization is required after public hearing.

Section VI.A: Public Hearings and Order of Business.

Hearings shall be publicly noticed in accordance with the Development Bylaw of the Town of Brookfield.

Public comment may be offered during a public hearing, subject to the limits under Section V(G) of these rules.

The Chair shall conduct the hearing in the following manner, unless the Chair or a majority of the Board determines to proceed otherwise:

- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events.
- C. Request disclosure of conflicts of interest and ex parte communications.
- D. Review the definition of interested persons in 24 V.S.A. § 4465(b).
- E. Explain that, pursuant to 24 V.S.A. § 4471(a), only an interested person who has participated in this proceeding may take an appeal of any decision issued in this proceeding.
- F. Ask all who believe they meet the definition of interested person to identify themselves and to provide contact information. The Board shall not make any determination as to party. As these Rules do not differentiate between persons with interested person status and those without, anyone seeking to participate in a proceeding may do so, subject to these Rules and those established by the Chair.
- G. Accept written information presented to the Board.

- H. Invite the applicant or applicant's representative to present such application or proposal.
- I. Invite Board members to ask questions of the applicant or applicant's representative.
- J. Invite interested persons and members of the public to present their information and questions regarding the application or proposal.
- K. Invite, as determined within the Chair's discretion, the applicant or applicant's representative to respond to information presented, more questions or comments from members of the Board, or more questions or comments from interested persons and members of the public.
- L. If, prior to closure of the hearings on an application, a decision on an issue is required of the Board, the Board shall make such decision following public deliberations unless, by motion and majority vote, it determines to discuss the issue in deliberative session.
- M. Once the Board has completed taking information on an application before it, upon motion and majority approval, the Chair shall either adjourn the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.
- N. Upon closure of the hearings, the Board shall then conduct public deliberations, or may vote to enter deliberative session.

Section VI.B: Site Visits.

Site visits shall be open to the public. Site visits shall be held pursuant to the following conditions:

- A. If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled earlier in the day on the same day as the public hearing, unless the Chair determines that such scheduling is impracticable and chooses to schedule the site visit on a different day. Such site visits shall be publicly noticed in the same manner as public hearings.
- B. If necessary, the Board may recess a hearing to conduct a site visit at a property which is the subject of an application before the Board.
- C. If necessary, the Board may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the Board.
- D. The minutes of the proceeding shall reflect that a site visit was held, who was present, and the nature and duration of the site visit.

Section VI.C: Service List.

The Board or its designee shall create a list of all individuals who participated. The list shall include those who participated orally and those who participated in writing. All decisions of the Board shall be mailed to those on the list. The list shall include:

- A. The names of those who participated in the proceedings.
- B. The nature and content of participation by those who participated.
- C. The mailing address of each of these persons.

Section VI.D: Ex Parte Communication.

- A. **Prohibited.** Ex parte communication is prohibited. Any Board member who inadvertently conducts ex parte communication must disclose such communication as required below.
- B. **Disclosure.** At each hearing, the Chair shall request that members disclose any ex parte communications. Board members who have received written ex parte communications shall place in the record copies of all written communications received as well as all written responses to those communications. Members shall prepare a memorandum stating the substance of all oral communications received, all responses made and the identity of each person making the ex parte communication, which shall become a part of the record of the proceedings.

Section VI.E: Decisions.

The Board shall make its decisions by public deliberation, unless by majority vote it has determined to make a decision in deliberative session. Deliberative sessions are not open to the public and need not be warned. 1 V.S.A. §§ 312(e), (f). Members of the Board who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The chair has the same voting rights as all members and can make motions.
- C. No second shall be required for a motion to have the floor.
- D. All members present are expected to vote unless they have recused themselves.
- E. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.

F. For a motion to pass, it must receive the concurrence of a majority of the entire Board, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).

G. The Board shall issue a decision within 45 days of the final public hearing.

Section VII: Conflicts of Interest.

Participation, disclosure of conflicts, and recusal shall be governed by the following procedures:

A. **Participation.** A Board member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration. A Board member shall not, personally or through any member of his or her household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in any proceeding pending before the Board.

B. **Disclosure.** At all hearings where approval from the Board is required for a development or subdivision after public hearing, the Chair shall request that Board members disclose all potential conflicts of interest. At any other meeting of the Board, the Chair may request such disclosure. When recognized by the Chair, any person may request disclosure of potential conflicts of interest.

Nonetheless, after disclosing a conflict or perceived conflict, a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall disclose the nature of the potential conflict of interest, and the reason(s) why he or she is able to act in the matter fairly, objectively, and in the public interest. This shall be noted in the minutes of the proceeding.

C. **Recusal.** A Board member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:

1. An applicant or any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.
2. A Board member who has recused him or herself from a proceeding shall not sit with the Board, deliberate with the Board, or participate in that proceeding as a Board member in any capacity.
3. If a previously unknown conflict is discovered, the Board may seek or receive information pertaining to the conflict, and if appropriate, adjourn to a deliberative session to address the conflict.

4. The Board may adjourn proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the Board. The Board may then resume proceedings with sufficient members present.

Section VIII: Removal.

Upon majority vote, the Board may request that the Brookfield Selectboard remove a Board member from the Board. Board members may be removed for cause by the Selectboard upon written charges and after public hearing. 24 V.S.A. § 4460(c).

Section IX: Amendments.

These rules may be amended at any regular or special meeting by a majority vote.