HARTFORD ZONING BOARD OF ADJUSTMENT

Rules of Procedure

Section 1: Authority
The Hartford Zoning Board of Adjustment (ZBA) hereby adopts the following rules of procedure in accordance with 24 V.S.A. § 4461 (a) and 1 V.S.A. § 312 (e), (f), and (h).

Section 2: Declaration of Policy
These rules are adopted in order to ensure orderly public proceedings, consistent treatment of applicants, compliance with state and federal law, protect the due process rights of parties, and manage conflicts of interest among members.

Section 3: Definitions
1. Conflict of Interest shall mean:
   a. A direct personal interest of a Board member, his or her related persons, household member, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Hartford Zoning Board of Adjustment;
   b. A direct or indirect financial interest of a Board member, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Hartford Zoning Board of Adjustment; or
   c. A situation where a Board member has 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.

2. Related persons shall mean a Zoning Board of Adjustment’s spouse, child, stepchild, parent, grandparent, grandchild, brother or sister, a parent or a grandparent in law, aunt or uncle, and a brother or sister in law.

3. Deliberative session is a closed session in which a quasi-judicial body, such as the Zoning Board of Adjustment, weighs, examines, and considers evidence that was presented in a public hearing, and may issue a written decision which becomes a public record.

4. Recuse means to remove oneself because of a real or perceived conflict of interest.

5. Majority vote means a concurrence of a majority of the Commission regardless of how many members are present or 4 concurring votes.

6. As defined by 24 V.S.A. § 4465 (b), Interested Person means:
a. A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.

b. The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.

c. A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.

d. Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

e. Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

Section 4: Officers and Alternates

1. After Town Meeting but prior to May 1, or at other times throughout the year as needed, the ZBA shall hold an organizational meeting and elect by majority vote, a Chair, Vice Chair and Clerk.

2. The Chair shall preside at all meetings, hearings, and deliberative sessions, decide all points of order or procedure, and appoint any committees that may be necessary. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration.

3. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, or at the Chair’s request. The Clerk shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request.

2
4. It shall be the duty of all members to review the minutes and other official records of the ZBA’s meetings and actions, and correct and ratify these when appropriate and necessary.

5. Department of Planning and Development Staff (Staff) shall ensure timely completion and preservation of the Commission’s records.

6. The Selectboard shall annually, or as needed, appoint up to two alternates who may temporarily serve as ZBA members in the event of a recusal or absence or one or more members.

Section 5: Regular and Special Meetings

1. Regular meetings shall be held every five weeks or as warranted. The annual list of meetings of the Board shall be available in December each year and amended as necessary. Regular meetings may be cancelled at any time by the Chair.

2. Special meetings may be called by the Chair, provided at least 48 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.

3. A quorum shall consist of three members of the five member ZBA.

4. Members may participate by telephone as long as the ZBA member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the ZBA member.

5. All meetings will be open to the public unless the Board has entered an executive or deliberative session.

6. At each meeting, there shall be 5 minutes reserved for public comment near the beginning of the meeting. If this time period proves insufficient, the Chair may extend the period to a time certain.

7. Each meeting shall have an agenda outlining the time the meeting will begin and the order items will be discussed. Those who wish to be added to the agenda shall contact the Zoning Administrative Officer to make arrangements.

8. All business shall be conducted in the same order as it appears on the agenda, except that by unanimous consent, the Chair may alter the order of items to be considered.

9. The Chair shall rule on all questions of order or procedure and shall enforce these rules as required by 1 V.S.A. § 312(h).

10. Meetings shall not exceed three hours in length or past 10:00 p.m. unless approved by a majority vote.
Section 6: Public Hearings

1. Public hearings shall be conducted as a quasi-judicial proceeding as defined in 1 V.S.A. § 310 (5)(B).

2. The Chair shall conduct the hearing in the following manner:
   
a. Open the Public Hearing by reviewing the warning of the application.
b. Review the definition of interested persons.
c. Review the hearing process as follows:
   • Staff will review the draft Findings of Fact for the application.
   • The applicant and/or his/her representative will be invited to present additional information regarding the application.
   • Board members will be invited to ask questions and voice any concerns regarding the application.
   • Interested persons will be invited to ask questions and voice any concerns regarding the application.
   • The Board will be allowed to ask additional questions and make additional comments regarding the application.
   • Members of the public who are not interested persons will be invited to make comments or ask questions regarding the application. Such comments shall be limited to two minutes per speaker, unless by unanimous consent the Board sets a different time limit. The Chair shall apply consistent time limits to all whom they recognize to speak.
   • Final questions and comments from the applicant or his/her representative, Board members, interested persons will be presented.
   • The Chair will request a motion from a member of the Board to close the Public Hearing or continue the hearing pending submission of additional information.

d. Members of the public who wish to participate as Interested Persons must explain to the Board how they meet the definition of Interested Person.

e. A motion to continue the Public Hearing must include a specific date and time.

f. If necessary, the Board may continue the Public Hearing and schedule a site visit to a property which is the subject of an application before the Board, subject to the following conditions:
   • The permission of the property owner shall be obtained for the visit.
   • All Board members and Interested Persons shall be allowed to attend the site visit.
   • The site visit shall be scheduled during a Public Hearing, or reasonable notice shall be given to the applicant and interested parties.
   • Following the site visit, the observations of the Board shall be entered into the Board’s minutes.
Section 7: Decisions

1. After the Public Hearing is closed, the Commission shall make a Decision in open meeting unless by a majority vote the Commission agrees 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).

2. 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 the decision regarding that application. Review of taped hearings shall suffice, subject to the written consent of all parties.

3. When voting, whether in deliberative session, executive session, or a public meeting, the following rules shall apply:
   a. Motions shall be made in the affirmative.
   b. The Chair has the same rights as all members and can make or second motions.
   c. All members are expected to vote unless they have recused themselves consistent with the conflict of interest policy in section 10.
   d. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
   e. For a motion to pass, it must receive the concurrence of a majority of the entire Board, regardless of how many are present, i.e. a majority vote. 1 V.S.A. § 172.
   f. If the full ZBA is not present, the applicant or a ZBA member may request that the proceeding be continued to a future session when there are more ZBA members present.

4. The ZBA must issue a written decision within 45 days of closing the Public Hearing. Failure to issue a decision within this period shall be deemed approval and shall be effective on the 46th day.

5. A written decision, issued by the Zoning Board of Adjustment in deliberative session, need not be adopted in an open meeting if the decision will be a public record. 1 V.S.A. § 312 (f).

Section 8: Filing of Applications

Applications for Conditional Use Approval and Variances will be subject to the “Application Process Policy” adopted by the Zoning Board of Adjustment on March 10, 1999 as amended.

Section 9: Ex – Parte Communications

While a proceeding is pending, a ZBA member may not communicate with any parties or members of the public regarding a particular application outside of a hearing or meeting. A ZBA member must disclose any such communication at an open ZBA meeting or hearing and prior to
any vote. Significant and substantive ex parte communication may be grounds for a ZBA member to recuse him or herself from a proceeding.

Section 10: Conflicts of Interest & Disclosure

1. ZBA members shall not participate in any action if he or she has a conflict of interest in the matter under consideration.

2. ZBA members 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 cause, proceeding, application or other matter pending before the Zoning Board of Adjustment.

3. ZBA members shall recuse themselves from all proceedings associated with a matter that presents a conflict.

4. The applicant or any interested person may request a member(s) recuse him or herself due to a conflict of interest.

5. A ZBA member who has reason to believe that he or she has or MAY have a conflict of interest but believes that he or she is able to act fairly, objectively and in the public interest in spite of the conflict shall, prior to participating in any action on the matter, prepare a statement describing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest.

6. In the instance where a conflict is disclosed or is perceived, the remaining members of the ZBA shall have the authority to inquire about a possible conflict of interest and to recommend that the member recuse him or herself from the matter. If the member believes that he or she does not have a conflict of interest or believes that he or she is able to act fairly, objectively and in the public interest in spite of an existing conflict of interest, the member shall, prior to participating in the matter, prepare a statement describing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest.

7. A ZBA member who has recused him or her self need not disclose the nature of the conflict.

8. The statement required by subsections (6) and (7) above shall be signed by the ZBA member and filed as part of the minutes.
Section 11: Removal

If a ZBA member is believed to have a conflict of interest and fails to recuse him or herself, or fails to attend three consecutive hearings or meetings, by majority vote the ZBA may, in writing, request the Selectboard remove the ZBA member, either permanently or temporarily.

Section 12: Records

1. A file on all materials and decisions relating to subdivision and site plan applications shall be kept in the Department of Planning and Development Services as part of the records of the Zoning Board of Adjustment.

2. All records of the Zoning Board of Adjustment shall be a public record.

Section 13: Amendments.

These rules may be amended at any regular or special meeting by a majority vote, provided that each ZBA member has been presented a written copy of the proposed amendment at least 48 hours before the meeting at which the vote is taken. However, notice of a proposal to change one section shall not constitute a general notice to amend any section or substance not included in the written copy of the proposed amendments.

This Code of Conduct was adopted by the Zoning Board of Adjustment on the 14th day of September 2005.

Connie Heiland, Chair

h/zba2005/ Rules of Procedure March 15 draft