

TOWN OF FARMINGTON
Board of Appeals Ordinance

ENACTED: March 8, 1976

AMENDED: September 30, 1999
July 19, 2004
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CERTIFIED BY: Jeanne Penthan
Name

Town Clerk
Title

Affix Seal

Town of Farmington

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Chapter 3

Article 1. Appeals Board

3-1.1 AUTHORITY, ESTABLISHMENT & TITLE

Pursuant to Title 30-A M.R.S.A. Section 3001, Title 30-A M.R.S.A. Section 2691 and Title 30-A M.R.S.A. Section 4353, the Town of Farmington hereby establishes a Board of Appeals by enacting this Ordinance that shall be titled "Board of Appeals Ordinance", (hereinafter referred to as "this Ordinance") which ordinance shall repeal and supercede the "Appeals Board, Farmington, Maine" Ordinance adopted on March 8, 1976 amended March 8, 1982 and the "Hearing Rules, Appeals Board, Town of Farmington, Maine".

3-1.2 JURISDICTION

The Board of Appeals shall have jurisdiction to hear and act upon appeals by any person, body, company, corporation or other legal entity that has suffered a particularized injury as the result of any decision, order, rule, action or failure to act by any municipal official, agency, board or other body where the Board of Appeals is specifically given jurisdiction by statute or ordinance. Upon finding that an application for appeal is not within the Board's jurisdiction, the Appeals Board shall refuse to hear the appeal. Such refusal shall be in writing, stating the reason or reasons for refusal, and shall be mailed (certified, return receipt) or hand delivered to the applicant, the applicant's representative or agent, the municipal officers, the municipal official, agency, board, or other body from whose decision, order, rule, action or failure to act the appeal was attempted, and to all other parties to the application for appeal within seven (7) days of such decision.

3-1.3 EFFECTIVE DATE

The effective date of this Ordinance shall be the date this Ordinance is adopted by the voters at Town Meeting.

3-1.4 VALIDITY AND SEVERABILITY

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision.

3-1.5 APPOINTMENT, TERM AND COMPOSITION

- A. There shall be a Board of Appeals consisting of seven (7) regular members and two (2) alternate members all of whom shall be residents of the Town. The members of the Board, who shall serve without compensation, shall be appointed by the municipal officers and be sworn into office by the Town Clerk, or other person authorized to administer oaths, before performing any official duties as a Board of Appeals member.
- B. Terms of regular members shall be for three (3) years with staggered terms, and the members shall serve until their successors are appointed. The alternate members shall be appointed for a term of one (1) year and shall act on the Board in place of members who are unable to act due to a conflict of interest, absence or physical incapacity. The Chairman shall designate which alternate member shall serve in the stead of an absent or excused member. Alternate members shall have no voting rights until such time as they are designated by the Chairman to fill a vacancy.
- C. Terms shall run from July 1st through June 30th.
- D. No person who is a municipal officer, municipal official or municipal employee, general assistance administrator, town manager, code enforcement officer or who is a father, mother, spouse, sister, brother, or child of a member serving on the Board of Selectmen, Board of Appeals or Planning Board may be appointed as a regular or alternate to the Board of Appeals.
- E. A member of the Board of Appeals may be removed for cause after notice and hearing by the municipal officers before the expiration of his or her term. The term "for cause" shall include, but shall not be limited to, failure to attend three (3) consecutive board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest" as determined by a majority of the remaining members of the Board of Appeals (See 3-1.5 for definition of Conflict of Interest).
- F. When there is a permanent vacancy of either a regular or alternate member, the Secretary shall immediately notify the Town Clerk who shall inform the municipal officers. Within sixty (60) days of the existence of the vacancy, the municipal officers shall appoint a person to serve for the unexpired term.

3-1.6 MEETINGS AND PUBLIC HEARINGS

- A. The annual organizational meeting and election of officers shall be in the month of July. Other meetings shall be held as necessary.
- B. All meetings of the Board of Appeals shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. Executive sessions shall be held only to transact legal consultation, internal disciplinary proceedings and other business acceptable under the Right to Know laws.
- C. Members of the Board shall avoid ex parte communications with any party-in-interest pertaining to any matter which is under consideration or may come under consideration before the Board. If a party-in-interest has such a communication with a Board member outside of a public meeting, the Board member shall make the communication and the contents thereof known to the other members of the Board and public.
- D. The Board shall notify the petitioner, the Planning Board, Code Enforcement Officer and the municipal officers of any meeting or public hearing. The Code Enforcement Officer, Planning Board and municipal officers shall be made parties to the action, regardless of whether they attend or raise any issues at such meetings or public hearings. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing, subject to the limitations set forth in sections 3-1.6 and 3-1.7.

3-1.7 ORGANIZATIONAL STRUCTURE AND VOTING PROCEDURES

- A. The Board of Appeals shall elect annually a Chairman and Secretary from its membership. An alternate member may serve as Secretary; however, no alternate member shall be a voting member unless designated to take the place of an absent member by the Chairman.
- B. The Chairman shall call meetings of the Board of Appeals as required. The Chairman shall also call meetings of the Board when requested to do so by a majority of the members of the Board of Appeals or by the Board of Selectmen. The Chairman shall preside at all meetings of the Board, and shall be the official speaker for the Board. In the event the Chairman is indisposed or otherwise absent, the Board shall elect a temporary presiding officer who shall preside at all meetings of the Board in the Chairman's absence.

- C. The Secretary shall maintain a permanent record of all Board meetings through transcription or electronic recording and all correspondence of the Board. The Secretary shall be responsible, with the assistance of the Town Manager's Office, for maintaining those records that are required as part of the various proceedings brought before the Board. All records prepared or maintained by the Secretary in reference to any public proceedings are deemed public and shall be filed in the Town Clerk's office and may be inspected at reasonable times. The Secretary shall be responsible for making all notifications and announcements as are required.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the remaining members present and voting except the member who is being challenged. The term "conflict of interest" shall include but not be limited to bias, family relationship or direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (grandfather, father, wife, son, grandson, e.g.) or to his or her employer or the employer of any member of the person's immediate family.
- E. A quorum shall consist of four (4) members. All votes shall be by majority of the Board.
- F. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application or appeal under consideration.
- G. The Chairman shall appoint an alternate member, if available, to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from any portion of the hearing due to late arrival. The alternate member will act for the regular member until the case is decided.
- H. No regular or alternate member shall vote on the determination of any matter that was the subject of public hearing unless the member has attended the public hearing hereon; however, where such a member has familiarized himself or herself with such matter by reading the record, reviewing tapes of the hearing and reviewed documents, he or she shall be qualified to vote upon preparing and submitting to the Chairman a sworn statement after placing that fact on the record.
- I. The Board of Appeals may adopt rules of administration and procedure for the conduct of its affairs, provided such rules are not contrary to or inconsistent with this Ordinance.

- J. The Board of Appeals may prepare and submit to the Town Manager an annual budget relating to the operation of the Board.
- K. The Chairman may waive any rule for good cause upon vote of a majority of the board members in attendance. The adoption or waiver of any rule shall be entered in the minutes of the Board.

3-1.8 POWERS AND DUTIES

A. General Responsibilities

It shall be the responsibility of the Board of Appeals to become familiar with all the duly enacted ordinances of the Town or State law which it may be expected to act upon as well as with the applicable State statutes.

- B. Except as jurisdiction to hear other matters is otherwise expressly provided for (or prohibited) by ordinance or statute, the Board of Appeals shall have only the powers and duties listed in Section C “Administrative Appeals: and Section D “Variance Applications”. The Board shall have the power to adjudicate only upon receipt of a written administrative appeal or variance application by an aggrieved party.

C. Administrative Appeals

To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer, Planning Board, General Assistance Administrator, Town Manager, or Sewer Commissioners, or any other municipal official or Administrative Board in the administration of any ordinance which designates the Board of Appeals as the appeal authority. The Board of Appeals shall determine from the record of the proceedings below, whether there has been an error of law, misinterpretation of the relevant ordinance, or a misapplication of the law to the facts as found below. If the record of the proceedings below is not adequate to allow the Board of Appeals’ review, the Board may remand the matter back to the municipal official or board from whose decision or failure to act the appeal is taken, for additional fact finding. If the Board of Appeals determines from the record of the proceedings below that there has been an error of law, a misinterpretation of the relevant ordinance, or a misapplication of the law to the facts as found below, the Board shall remand the matter for correction and for those further proceedings that are specified by the Board of Appeals and that are consistent with the Board of Appeals’ decision.

The term “below” in the preceding paragraph refers to the proceedings from which the appeal is being taken.

D. Variance Applications

- (1) To hear and decide applications requesting such variance from the terms of ordinances related to dimensional requirements such as setbacks, frontage, lot width, structure height, area, and size of structures, yards, or open spaces where strict application of the provisions of the pertinent ordinance would result in undue hardship.

A use variance establishing a use prohibited by ordinance may not be granted, nor shall a variance be granted because of the presence of non-conformities in the land use district or uses in adjoining land use districts.

Establishment or expansion otherwise prohibited shall not be allowed by variance. A financial hardship shall not constitute grounds for granting a variance.

A variance may include such conditions and safeguards as are appropriate under the pertinent ordinance. Any variance granted shall be the minimum necessary to relieve the hardship. The words “undue hardship” as used in this Ordinance shall mean:

- (a) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (b) That the need for a variance is due to the unique circumstance(s) of the property and not to the general conditions in the neighborhood;
 - (c) That the granting of a variance will not alter the essential character of the locality; and
 - (d) That the hardship is not the result of action taken by the applicant or a prior owner.
 - (e) The Board of Appeals shall also consider any additional standards for variances specified by statute or ordinance.
- (2) If otherwise permitted by law, the Board may permit a variance from its setback requirements only when strict application of those requirements would cause undue hardship. Notwithstanding subsection D (1) above, for the purpose of reviewing requests for

setback variances for single family dwellings, the term “undue hardship” shall have the following meaning:

- (a) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- (b) The granting of a variance will not alter the essential character of the locality;
- (c) The hardship is not the result of action taken by the applicant or a prior owner;
- (d) The granting of the variance will not substantially reduce or impair the use of the abutting property; and
- (e) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available. A variance granted under subsection D (2) shall be limited to permitting a variance from a setback requirement for a single family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a setback requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

(3) Disability Variance

Notwithstanding subsection D (1) above, the Code Enforcement Officer may grant a variance to the owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. Code Enforcement Officer shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under M.R.S. 5 § 4553, and the term “structures necessary for access to or egress from the dwelling” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

3-1.9 APPELLANT AND VARIANCE APPLICANT REQUIREMENTS

- A. Any person aggrieved by a municipal decision that is expressly subject to review by the Board of Appeals pursuant to ordinance or statute, shall commence his or her appeal within thirty (30) days after issuance

of a written decision from the Code Enforcement Officer, Planning Board or other municipal official.

- B. Variance applications may be submitted at any time.
- C. All appeals and variance applications shall be filed in duplicate with the Town Clerk on forms to be approved by the Board accompanied by statements and or photographs which shall become part of the record of such application or appeal.
- D. Each variance application shall indicate in writing that it has satisfied the required approval standards, if applicable, and explain the variance sought. Each administrative appellant shall indicate in writing the basis for his or her claim and cite the decision being appealed.
- E. It shall be the variance applicant's burden to present sufficient admissible evidence to enable the Board to make each and every affirmative finding necessary under the applicable ordinance to enable the Board to take the action being sought by the applicant. It shall be the administrative appellant's burden to provide the Board with the complete record of the proceedings below, and to identify any claimed errors of law, misinterpretations of the ordinance in question, or misapplication of law to the facts as found below. Each variance applicant or the appellant shall indicate in writing that he or she understands that it is his or her burden to prove his or her case to the Board.

The term "below" in the preceding paragraph refers to the proceedings from which the appeal is being taken.

- F. Each variance application or appeal shall identify the property involved and list the names and addresses of record, in the most recent tax listing of the Town, of all property owners within five hundred (500) feet of the properties in rural areas and two hundred and fifty (250) feet of properties in urban areas.
- G. After the first public notice of hearing, no amendment of any application or appeal shall be permitted except by order of the Board on motion of the application for good cause shown. If the Board approves an amendment, the Board may reschedule the public hearing, conduct the public hearing as originally scheduled, or conduct the hearing as originally scheduled and direct or authorize other appropriate steps to assure that the public's opportunity to comment on the application as amended is preserved. The Code Enforcement Office shall be responsible for placing a public notice in the same newspaper in which the original public notice appeared identifying the

application in the manner first published and describing the nature of the change.

- H. All applications must be accompanied by the appropriate application fee that shall be set by the Board of Selectmen. All applicable fees including but not limited to postage reimbursement, advertising fees, and/or consultant fees will be the responsibility of the applicant.

3-1.10 BOARD OF APPEALS PROCESSING

- A. The Town Clerk shall record the date of receipt on the copies of any such appeal or application and shall forthwith transmit one copy of the notice of appeal or variance application to the Board of Appeals and keep the other copy available in the Town Clerk's office for public inspection.
- B. Before taking action on any appeal or variance application, the Board may hold a public hearing.
- C. The Board of Appeals, within twenty (20) days from receipt of a filing notice of an appeal or variance application, shall determine a meeting date, and cause to be advertised in a newspaper of general circulation in the Town a notice of the appeal or variance application identifying the property involved, the nature of the appeal or variance application, and the time and place of public meeting on the matter. The public meeting shall not be held earlier than ten (10) days after the date of such publication of notice.
- D. Within three (3) business days after the date of publication of the public hearing notice, the Board of Appeals shall mail by certified mail, return receipt requested, a copy of the notice of appeal or application for variance, to each of the property owners whose property physically abuts the property listed in the appeal or application. In addition, the Board shall mail the same notice, by first class mail, to the other property owners whose property is located within five-hundred (500) feet in rural areas (Tax Maps indicated with an "R") and two-hundred and fifty (250) feet in urban areas (Tax Map indicated with a "U") of the subject property. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a properly mailed notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Board.
- E. At any hearing a party may appear in person or by agent or attorney. Hearings shall not be continued to other times except for good cause.

- F. The Code Enforcement Officer or his designated assistant shall be notified of and shall attend all hearings and may present to the Board all plans, photographs, or other material he or she deems appropriate for an understanding of the appeal or variance application.
- G. The appellant's or applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chairman. All persons at the hearing shall abide by the order of the Chairman.
- H. An appeal or variance granted by the Board under the provisions of this Ordinance shall expire if a Building Notification Form or Building Permit, whichever may apply, is not filed/obtained within six months of the date on which the appeal or variance is granted. The appeal or variance so granted shall state this restriction on its face.
- I. Title 30-A M.R.S.A. 4353(5) states "If the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in a recordable form. This certificate must be recorded in the local registry of deeds within ninety (90) days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval." The Town shall provide to the applicant a certificate appropriate for recording within thirty-five (35) days of the date of approval and it shall be the applicant's responsibility to record the document at the Franklin County Registry of Deeds as required by the statute.
- J. The Board shall render a decision on each appeal and variance application within thirty (30) days following the public hearing on such appeal or application unless the Board and the applicant mutually agree to an extension of time, or unless the Board determines that more time is necessary to make its decision.
- K. The Board shall keep a record of each appeal entertained, noting the date when received from the Town Clerk, the dates of meetings and hearings, and the person by whom such appeal or variance application was formally presented. The Board shall record in writing the reasons for its actions and the final disposition of each and every appeal or variance application.

- L. All of the foregoing shall be a matter of public record. Any plan, drawing or other data on which the Board has based its decision shall be endorsed thereon by the Board.
- M. All testimony in variance applications and argument in administrative appeals shall be transcribed and/or electronically recorded; and such transcripts together with all exhibits, documents, requests, applications, and other records filed in the proceedings shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, including the basis or reasons for such findings and conclusions. Findings and conclusions shall be made on all the material issues of fact, law or discretion presented, and on all orders, approvals, reliefs or denials made on such issues.
- N. The Board may reconsider any decision within thirty (30) days of its prior decision. A vote to reconsider and the action taken on that reconsideration must occur and be completed within thirty (30) days of the date of the vote on the original decision.
- O. Notice of any decision and rights of and procedure for appeal to the Maine Superior Court shall be mailed (certified, return receipt) or hand delivered to the applicant, the applicant's representative or agent, the Board of Selectmen, and all other parties to the appeal within seven (7) days of such decision.
- P. An appeal may be taken, within forty-five (45) days after the decision is rendered (the date of the vote on the original decision), by any party to Superior Court from any order, relief or denial in accordance with Maine law.

3-1.11 AMENDMENTS

- A. Initiation of Amendments: An amendment to this Ordinance may initiated by:
 - 1. The municipal officers, provided a majority of the municipal officers has so voted;
 - 2. Written petition of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial elections.
- B. Public Hearing: The municipal officers shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted and advertised in a newspaper of general circulation in the

municipality at least seven (7) days prior to the hearing.

- C. Adoption of Amendment: An amendment to this Ordinance shall be adopted by a majority vote of a Town Meeting.