

ARTICLE 7 BOARD OF APPEALS

Sec. 4-701 General Provisions

1. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and Roberts' Rules of Order.
2. It shall be the responsibility of the Board to become familiar with all the duly enacted ordinances of the town which it may be expected to act upon as well as with the applicable state statutes.

Sec. 4-702 Appointments

1. The Board shall consist of five (5) members appointed by the municipal officers of the Town of Farmingdale for terms of three (3) years.
2. Neither a municipal officer nor his or her spouse may be a member of the Board.
3. Any member of the Board may be removed from the Board, for cause, by the municipal officers before expiration of his or her term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him or her. The term, "for cause" shall include failure to attend four (4) consecutive Board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest."
4. When there is a permanent vacancy, the Chair shall immediately notify the Town Clerk. The municipal officers shall within 60 days appoint a person to serve for the unexpired term.

Sec. 4-703 Officers and Duties

1. Officers. The officers of the Board shall consist of a Chair and an Acting Chairperson, who shall be elected annually by a majority of the Board.
2. Chairperson. The chairperson shall perform all duties required by law and these by-laws and preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Board.
3. Acting Chairperson. The Acting Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability or disqualification.
4. Secretary. The Secretary, who shall not be a regular member of the Board, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Secretary shall also arrange proper and legal notice of hearings, attend to correspondence of the Board, and to other duties as are normally carried out by a secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and shall prepare a complete record of each hearing, including: date(s), time(s), place(s) of the hearing(s); subject of the hearing; identification of each participant; any agreements made between parties and the Board regarding procedures; the testimony presented; findings of fact and conclusions; the decision of the Board; and the date of issuance of the decision. All records are public and may be inspected at reasonable times.

Sec. 4-704 Conflict of Interest

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1. 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 members, except the member whose potential conflict is under consideration.
2. The term "conflict of interest" shall be construed to mean 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 employer or the employer of any member of the person's immediate family.

Sec. 4-705 Powers and Limitations

1. Board of Appeals. The Board shall have the following powers to be exercised only upon receipt of a written application for variance by the affected landowner or application for appeal by an aggrieved party.
2. Variance. A request for a variance is a request to authorize something not allowed in the Farmingdale Code of Ordinances.
 - A. Any person requesting a variance must file an application for such variance, in writing, on a form entitled "Application for Variance" provided at the Town Clerk's office. Reference is made to "Appendix A" Application for Variance of this Article. The Board may grant a variance only where strict application of Chapter 4 Articles 6 and 12 of the Farmingdale Code of Ordinances would cause undue hardship. The words "undue hardship" as used in this subsection mean:
 - 1) That the land in question cannot yield a reasonable return unless a variance is granted;
 - 2) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - 3) That the granting of a variance will not alter the essential character of the locality; and
 - 4) The hardship is not a result of action taken by the applicant or prior owner.
 - B. 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 recordable form. This certificate must be recorded in the local registry of deeds within 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.
 - C. Notwithstanding the general variance standard provided above, the Board of Appeals may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely for the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability resides on the property. The term "structures necessary for access to or egress from the property" shall include, but not be limited to, railings, wall, or roof systems necessary for the safety or effectiveness of the structure.
3. Appeal. A request for an appeal is a request for reconsideration of a decision made by others pertaining to the Farmingdale Code of Ordinances.

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- A. Appeal. Any person requesting an appeal must file an application for such appeal, in writing, on a form entitled "Application for Appeal" provided at the Town Clerk's office. Reference is made to Appendix B "Application for Appeal" of this Article.
- B. Appeals Board. The Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit, variance or other required approval, or any application therefore, including, the grant, conditional grant, denial, suspension, or revocation of any such license, permit, variance or other approval (hereinafter a "Decision") rendered by the Code Enforcement Officer or the Planning Board pursuant to Farmingdale Code of Ordinances.
- C. All appeals shall be heard pursuant to a de novo standard of review. The burden of proof shall be on the appellant. The Board shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of the ordinance or unsupported by substantial evidence in the record.
4. Board of Appeals is designated as the Board of Sewer Appeals. Reference Section 3-209.

Sec. 4-706 Meetings

1. The regular meeting of the Board shall be held once every other month or as necessary when applications for variances or appeals have been filed with the Town Clerk.
2. The annual organization meeting of the Board shall be the first regular meeting of the year.
3. Special meetings of the Board may be called by the chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
4. The order of business at regular meetings of the Board shall be as follows:
 - A. Roll call
 - A. Reading and approval of the minutes of the preceding meeting
 - B. Action on held cases
 - C. Public hearing (when scheduled)
 - D. Other business
 - E. Adjournment
5. All meetings of the Board shall be open to the public, except executive sessions. All site visits shall be open to the public and shall be attended by the members of the Board. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the town or Board at a substantial disadvantage.

Sec. 4-707 Voting

1. A quorum shall consist of three (3) members of the Board.
2. No hearing or meeting of the Board shall be held, nor any action taken, in the absence

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of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.

3. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the Board unless otherwise specified herein.
4. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.
5. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.

Sec. 4-708 Appeal Procedure

1. Any person aggrieved by an action which comes under the jurisdiction of the Board must file such application for appeal, in writing, on a form provided at the Town Clerk's office within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the office of the Town Clerk, setting forth the ground for his/her appeal. Upon receiving the application for appeal, the Town Clerk shall notify the Chairperson of the Board.
2. The fee to accompany applications for appeal shall be as set by the Board of Selectmen. Current fee rates are available from the Town Clerk. Checks are to be made payable to the Town of Farmingdale, Board of Appeals.

Sec. 4-709 Hearings

1. A request for a hearing initiates a process rather than an immediate appointment to be heard.
2. A request for a hearing is initiated by submission of a completed application form plus substantiating enclosures, with the nonrefundable Application Fee, to accurately and thoroughly express the rationale for the request to the Town Clerk. The Application shall also include any written communication from the Code Enforcement Officer which states why a permit could not be issued.
3. The Code Enforcement Officer and the Chair of the Appeals Board shall review the material submitted to determine whether the material provided meets the requirements of this Article.
4. The Town Clerk shall be advised whether the material provided is acceptable or not. If not acceptable, the Applicant shall be advised the specific reason(s) to be corrected or provided. If acceptable, the Applicant shall be requested to provide the additional direct costs, or estimated costs as determined by the Town Clerk, to the Town of Farmingdale. Reference Appendix 1 for a review of applicable fees.
5. The Board shall schedule a public hearing on all appeal and variance applications, after payment in full of all fee and direct costs, within (35) days of the filing of a completed application. Should the Board of Appeals wish to schedule a site visit prior to the public hearing, the thirty five (35) day time frame shall apply to the scheduling of the site visit, rather than the public hearing. The public hearing shall instead be conducted as soon as possible following the site visit.
6. The Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in the municipality, at least two times, the date of the first publication to be at least seven days prior to the hearing. The Board shall also cause notice of the

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hearing to be given to the municipal officers, the Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least 20 days prior to the date of the hearing.

Sec. 4-710 Decisions

1. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing.
2. The final decision on any matter before the Board shall be made by written order signed by the chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests 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, as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
3. The Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan (if any) and by Findings of Fact by the Board in each case.
4. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
5. The board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.
6. Notice of any decision shall be sent by certified or registered mail or hand delivered to the applicant or designated agent, the Planning Board, the Code Enforcement Officer, and the municipal officers within seven (7) days of the decision.
7. Decisions of the Board, once adopted, shall be immediately filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

Sec. 4-711 Reconsiderations

1. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within 10 days of its prior decision. A meeting to decide whether to reconsider shall be called by the Chairperson in accordance with this Article. The Board may conduct additional hearings and receive additional evidence and testimony.
2. Reconsideration should be for one of the following reasons:
 - A. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
 - B. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

Sec. 4-712 Appeal to Superior Court

The decision of the Board of Appeals may be taken, within forty-five (45) days after the decision is rendered, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure.

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