

BYLAWS FOR THE FARMINGTON ZONING BOARD OF ADJUSTMENT

AUTHORITY

1. These By-Laws are adopted under the authority of New Hampshire RSA 676:1 and Section 1.06 of the Zoning Ordinance of the Town of Farmington.
2. The Zoning Board of Adjustment shall have duties and responsibilities pursuant to RSA Chapters 672-677. The members shall also perform the duties of a Building Code Board of Appeals pursuant to RSA 674:34 and Section 1.09 of the Zoning Ordinance of the Town of Farmington.

MEMBERSHIP

1. The Zoning Board of Adjustment shall consist of five (5) members and up to three (3) alternates, appointed by the Board of Selectmen.
2. Terms of Membership. Members shall be appointed to terms of three (3) years pursuant to RSA 673:5.
3. Alternates. Alternates should attend all meetings to familiarize themselves with the workings of the Board so that they are ready to serve whenever a regular member is unable to fulfill his or her responsibilities. Alternate members shall substitute for regular members on any case when a regular member is absent or recused pursuant to RSA 673:14 and the Chair designates them to do so.
 - A. On all other matters before the Board including but not limited to approval of meeting minutes, election of officers, and amendments to and/or the adoption of these By-laws, alternate members shall be permitted to deliberate and vote on such matters together with the regular members. This shall not, however, have any impact on the ability of the Board to establish a quorum pursuant to Rules of Procedure, Number 4(A).
4. Members are expected to attend each meeting to fulfill their duties and responsibilities. Any member unable to attend a meeting shall notify the Chair as soon as possible.
5. Voting and non-voting members shall be announced by the Chair prior to the consideration of the agenda item. Alternate members who are not voting may fully participate during the presentation of applications and the public hearing. Once the Board moves into deliberations, alternates may no longer participate.
6. Attendance and Vacancies. All appointments to the Board shall serve for the terms appointed and until a successor shall have been appointed and qualified. Members who fail to attend four (4) meetings out of any twelve (12) consecutive meetings held without due cause may be recommended by the Zoning Board of Adjustment for replacement by the Board of Selectmen. Such failure to attend shall be deemed sufficient cause for the Board of Selectmen to remove the member pursuant to RSA 673:13. Appointments made to fill any vacancies shall be for full terms to begin the date of appointment by the appointing authority unless otherwise provided in state statute.

OFFICERS

1. A **Chairperson** shall be elected annually by a majority vote of the Board at the first regularly scheduled meeting of the Board following Town elections in March. He/she shall preside over meetings and hearings, appoint such committees as directed by the Board, and shall affix his/her signature in the name of the Board.
2. A **Vice Chairperson** shall be elected annually by a majority vote of the Board at the first regularly scheduled meeting of the Board following Town elections in March. He/she shall preside in the absence of the Chairperson and shall have full powers of the Chairperson on matters that come before the Board during the absence of the Chairperson.
3. If the Chair and the Vice-Chair are not present, or cannot sit on a case due to a conflict of interest, then the Board shall elect a temporary Chair from its members for that particular case or meeting.
4. A **Clerk/Secretary** shall be elected annually by a majority vote of the Board at the first regularly scheduled meeting of the Board following Town elections in March. He/she shall maintain a record of all meetings, transactions, and findings of the Board. Duties of the Clerk may be performed by staff pursuant to RSA 673:16, I. In cases where staff assistance is unavailable, the elected member shall fill this role..
5. All officers shall serve for one year and shall be eligible for re-election.

RULES OF PROCEDURE

1. Site Visits
 - A. Members may make site visits before the public meeting, if authorized by the Applicant. Observations on such site visits may form, in whole or in part, grounds for a decision of the Board.
 - B. At no time shall more than two (2) members of the Board be present simultaneously during a site visit unless the site visit has been called as a public meeting and proper public notice as required by New Hampshire statutes has been given. Other than observations of the site, no evidence shall be taken; and there will be no discussions of the evidence or deliberations at such site visits.
2. Meetings
 - A. **Regular meetings** shall be held at the Farmington Municipal Offices Building to conduct board business and public hearings commencing at 7:00p. m. on the first Thursday of each month. Other meetings may be held on call of the Chairperson, provided all such meeting comply with the public notice provisions of RSA 91-A:2, II.
 - B. The **order of business** for regular meetings shall be as follows:
 - i. Call to order by the Chairperson
 - ii. Pledge of Allegiance
 - iii. Minutes of the previous meeting
 - iv. Old Business
 - v. New Business - Disposition of appeals under consideration
 - vi. Other Board Business and Communications
 - vii. Adjournment

(Note: Although this is the usual order of business, the Board may wish to hold the hearings immediately after the roll call to accommodate the public.)

- C. Nonpublic meetings. If required, the Board may conduct nonpublic meetings pursuant to the laws of the State of New Hampshire. The Chair shall conduct nonpublic meetings utilizing the Checklist prepared by General Legal Counsel for nonpublic meetings.

3. Appeals

- A. Appeals from an administrative decision taken under New Hampshire RSA 676:5 shall be filed with the Planning Department within thirty (30) days of the date of the decision. Any appeal made after this deadline will not be considered timely.

B.

4. Quorum and Alternates

- A. A quorum for all business shall consist of three (3) regular members, which includes alternates sitting in place of regular members, as designated by the Chair on a case-by-case basis before the public meeting.
- B. If any regular Board member is absent, or disqualifies him/herself from sitting on a particular case, the Chairperson shall appoint an alternate who shall have all the powers and duties of a regular member.
- C. If there are less than five (5) members (including alternates) present, the Chair shall give the option to proceed or not to the Applicant. Should the Applicant choose to proceed with less than five (5) members present that shall not constitute grounds for a rehearing should the application fail.

5. Disqualification of a Board Member

- A. If any member finds it necessary to disqualify himself/herself from sitting in a particular case, as provided in RSA 673:14, the member shall notify the Chair as soon as possible so that the Chair can designate an alternate to sit in the disqualified member's place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to make a non-binding vote on the question of disqualification; only the member can disqualify himself or herself. Any such request shall be made before the beginning of the public hearing. The Board's vote shall be advisory and non-binding.
- B. Either the Chair or the member disqualifying himself/herself before the beginning of the public hearing on the case shall announce the disqualification. A disqualified member shall not sit with the Board during the public hearing and during all deliberations on the case.

6. Applications

- A. Each application for a hearing shall be made on forms approved by the Board and provided by the Planning Department to the Applicant. At each meeting of the Board, Town staff shall provide the Board with all applications received by the Planning Department which have been received no less than twenty-one (21) days before the date of the hearing.

- i. All application forms for the Zoning Board of Adjustment, and any revisions thereto, shall be adopted by resolution of the Board and shall become part of these By-laws.
 - B. Fees. Pursuant to RSA 673:16, II, all expenses incurred by the Board in connection with any Application shall be borne solely by the Applicant, including but not limited to fees and any expenses incurred for consultant services or investigative studies (as authorized by RSA 676:5, IV), unless otherwise waived by the Board for reason of special circumstance upon written request of an Applicant.
 - C. Public Notice. Notice of the public hearing shall be given as follows:
 - i. The appellant and every abutter shall be notified of the hearing by certified mail, return receipt requested, stating the time and place of the hearing; and such notice shall be given not less than five (5) days before the date fixed for the hearing of the appeal. The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate.
 - ii. A public notice of the hearing shall be placed in a newspaper of general circulation in the area and shall be posted to the website and in two (2) additional public places not less than five (5) days before the date fixed for the hearing of the appeal.
 - iii. The public hearing shall be held within thirty (30) days of the receipt of the notice of appeal.
 - iv. Any party may appear in person or by his/her agent or attorney at the hearing of an appeal.
 - v. The cost of notice, whether mailed, posted, or published shall be paid in advance by the applicant. Failure to pay such cost shall constitute valid grounds for the Board to terminate further consideration and to deny the appeal without public hearing.
- 7. Public Hearing. The conduct of public hearings shall be governed by the following rules:
 - A. The Chairperson or their designee shall open the public hearing by reading the public notice referring to the application.
 - B. The Chairperson shall read the application and report on the manner in which the public notice and personal notice was given.
 - C. Members of the Board, including alternates who have not been seated in place of members, may ask questions at any point during testimony after recognition from the Chairperson.
 - D. Any party to the case who desires to ask a question of another party to the case must do so through the Chairperson.
 - E. Each person who appears shall be required to state his name and address and indicate whether he or she is a party to the case, an abutter, or an agent or counsel of a party to the case.

- F. Any member of the Board, through the Chairperson, may request any party to the case to appear.
 - G. The Applicant (or the Applicant's counsel or agent) shall be called by the Chair to present the application to the Board. Thereafter, those (or their counsel or agent) in favor of the application shall be allowed to speak. Once those in attendance in favor of the application have spoken, the Board shall hear those (or their counsel or agent) in opposition to the application. After those in opposition to the application have spoken, the Applicant (or the Applicant's counsel or agent) shall be allowed to speak in rebuttal. Once they have spoken in rebuttal, those in opposition (or their counsel or agent) shall be allowed to speak in final rebuttal. Upon completion of the final rebuttal, questioning by the Board Members and presentation by the staff of the Town's comments, if any, the public hearing shall be declared closed; and the Board shall deliberate on the application or defer action on the application to a later date and schedule a date for continuance. After close of the public hearing no further comment from Applicant, abutter, or any other member of the public shall be taken.
 - H. Any person who speaks at a public hearing, other than the Applicant or an abutter, should clearly demonstrate and explain to the Board how he or she is affected directly by the proposal under consideration.
 - I. Any person who desires the Board to compel the attendance of a witness shall present his/her request in writing to the Chairperson not later than three (3) days prior to the public hearing.
8. Decisions. Decisions of the Board shall be governed by the following rules:
- A. Any decision made by the Board that is in favor of the Applicant shall require three (3) votes, including the approval of any conditions.
 - B. The application shall be approved or denied based upon a majority vote by the members of the Board hearing the application. In the event an application is heard by only three (3) members, an affirmative vote shall require all three (3) votes.
 - C. The Board shall decide all cases within 90 days of the close of the public hearing, unless the applicant agrees to an extension, and shall approve, approve with conditions, or deny the appeal. If the Board determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the Board may deny the application without prejudice, allowing the applicant to reapply for the same relief.
 - D. All decisions shall be documented on a form that is approved by the ZBA. If the appeal is denied, the notice shall include the reasons therefore.
 - E. The Board has the authority to attach reasonable conditions in the granting of any relief. These reasons include, but are not limited to, those necessary to preserve the spirit of the Ordinance. The placing of conditions may also be designed to protect the adjacent landowners, preserve the essential character of neighborhoods, secure the basic values of the master plan, and attempt to provide that substantial justice is done. However, the condition or conditions must be related to the use of the land and not to the personal circumstances of the Applicant. If the Board finds it necessary to attach conditions, they

must be spelled out in detail in the Board's decision. Pursuant to RSA 676:15 and 676:17 the Board may seek Injunctive Relief, a Fine, or both for the violation of a condition.

- F. Notification of the decision shall be sent to the Applicant, shall be filed in the records of the Board, and shall be available to the public within five (5) business days.
- 9. Voting. The Chair may assign the task of making a motion to any Board member, or such motion may be made by any voting member. Should a motion result in a tie vote or not receive the necessary three (3) votes to decide in favor of the Applicant, the opposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision.
- 10. Reconsideration by the Board: The Board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision. Motions for Rehearing can only be received at the Planning Department during normal business hours.
- 11. Motions for Rehearing: If the Board grants a motion for rehearing, a new public hearing shall be held within thirty (30) days of the decision to grant the rehearing, provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

JOINT MEETINGS AND HEARINGS

- 1. RSA 676:2 provides that the Board may hold joint meetings or hearings with other "land use boards", including the Planning Board, and that each Board shall have discretion as to whether to hold a joint meeting with any other land use board.
- 2. Joint meetings with any other land use board may be held at any time when called jointly by the Chairs of the two Boards.
- 3. A public hearing on any application before the Board of Adjustment will be held jointly with another board only under the following conditions:
 - A. The joint public hearing must be a formal public hearing on applications to both boards regarding the same subject matter; and
 - B. If the other board is the Planning Board, RSA 676:2 requires that the Planning Board Chair shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and
 - C. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other board, shall be followed; and
 - D. The other board shall concur in these conditions.


AMENDMENT

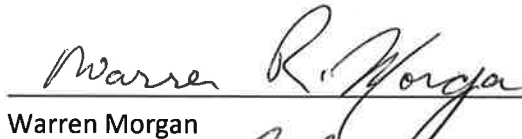
- 1. These By-Laws may be amended by the majority vote of the members provided that such amendment is read at two (2) successive meetings.

These By-Laws adopted September 8, 1988 and amended November 3, 2022.

 3/NOV/2022
John D. Aylard, Chairman

 3 NOV 22
Joseph Pitre, Vice-Chair

 3 Nov 22
William B. Fisher, Clerk/Secretary

 10-3-22
Warren Morgan

 10/3/22
John Scruton

Filed with the Town Clerk this date: _____

Becky Dickie, Town Clerk

